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## Minutes of the 1<sup>st</sup> Session of the 2<sup>nd</sup> IOTC Performance Review Panel

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Mahe, Seychelles, 2–6 February 2015

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**BIBLIOGRAPHIC ENTRY**

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## 1. OPENING OF THE MEETING

1. The 1<sup>st</sup> Session of the Indian Ocean Tuna Commission's (IOTC) 2<sup>nd</sup> Performance Review Panel (PRIOTC02) was held in Mahe, Seychelles, from 2 to 6 February 2015. The meeting was opened by the Chair who welcomed participants to Seychelles. The IOTC Members – European Union, Japan, Maldives, Mauritius, Oman and Seychelles, two non-governmental organisations – ISSF and PEW Charitable Trusts, were represented at the meeting with the IOTC Secretariat in support. The list of participants is provided at [Appendix I](#).

## 2. ADOPTION OF THE AGENDA

2. The Agenda provided at [Appendix II](#) was agreed and the list of documents is provided in [Appendix III](#).

## 3. ARRANGEMENTS FOR OTHER RFMOs PARTICIPATION

3. Pursuant to the Terms of Reference the review, the Panel shall also include two members (not Members of IOTC) from the Western Central Pacific Fisheries Commission (WCPFC) and the International Commission for the Conservation of Atlantic Tunas (ICCAT).
4. The Panel agreed to request the participation by New Zealand as first priority, and the United States as second priority from WCPFC, while it was agreed to nominate Brazil and Canada as first and second priority respectively from ICCAT.

## 4. UPDATE ON LEGAL REVIEW

5. The Chair, who had prepared an analyses of the IOTC Agreement, presented that legal review. The document is contained in [Appendix IV](#). The panel had an initial discussion on the analyses, and noted that there is still a need to amend the basic document in order fulfill IOTCs objective, in particular concerning membership, species under its purview, decision-making and dispute settlement. It was further noted amendments are needed to the agreement to be in line with modern standards for fisheries management, and this is consistent from PRIOTC01. The Panel will study and discuss the analyses further as its work progresses.

## 5. SELECTION OF EXPERTS

6. The Panel shall also, according to the Terms of Reference select a Science Expert not affiliated with the IOTC Membership and with expertise on tuna, tuna-like species and bycatch species caught in IOTC fisheries, to join the Panel. Four (4) applications had been received, but the Panel found that three of the candidates do not have the required background related to tuna species and tuna-RFMOs and that the fourth was affiliated with the IOTC Membership. The Panel agreed that the IOTC Secretariat shall re-announce the position as well as take proactive steps to identify and vet possible candidates with experience in other tuna-RFMOs. The Chair will facilitate the final selection via the IOTC Secretariat.
7. At the Commission meeting in 2014, it was agreed to include in the work of the Panel an analyses of the costs and benefits of IOTCs existence within and outside of the FAO structure.
8. Two candidates had expressed an interest. The Panel requested the Executive Secretary to make contact with one of the candidates in order see whether it could adjust the offer to be within the budget set aside for this analyses. The Chair will facilitate the final selection via the IOTC Secretariat.
9. Panel clarified/specified some of elements in the Terms of Reference to both experts, provided at [Appendix V](#).

## 6. REVIEW OF INFORMATION CONCERNING THE ASSESSMENT CRITERIA ADOPTED

10. The IOTC Secretariat had prepared a very comprehensive set of documents related to all the assessment criteria agreed by the Commission, detailed in [Appendix III](#).
11. The Panel undertook a preliminary evaluation of the progress made on the recommendations arising from the 1st IOTC Performance Review (PRIOTC01), as well as an initial review of the effectiveness of the IOTC to meet its mandate based on the assessment criteria. Reviews related to scientific aspects, financial and administrative issues

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as well as the relationship to FAO were, however, left to the second meeting of the Panel awaiting inputs by a scientific expert and a financial (cost/benefit) expert, as referred to in point 5 above.

12. As this is very much a work in progress, it would be premature to indicate any of the Panel's findings at this stage. The Panel's final report, including recommendations, will be presented at the Commission meeting in 2016.

## **7. PROGRAM OF WORK**

13. The Chair will prepare a draft report that will be distributed to Panel members four (4) months prior to the next meeting of the Panel. The draft will include analyses of the various criteria based on the documents prepared by the IOTC Secretariat and the comments, observations and discussions by the Panel at this meeting. The draft will, at that stage, not include any recommendations as that will be the main task at the second Panel meeting based on the said analyses.
14. Panel members will comment on the draft analyses by correspondence, and an updated version of the draft based on such comments and suggestions will be the basis for the discussions on recommendations at the Panel's next meeting. The Panel's analyses and recommendations based on reports by the two experts referred to in point 5, will be added to the document at its next meeting.

## **8. DATE AND VENUE OF THE NEXT MEETING**

15. The Panel agreed to meet again 14-18 December 2015 in Seychelles.

## APPENDIX I LIST OF PARTICIPANTS

### Chairperson and Legal Expert

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International Commission for the Conservation of Atlantic Tunas (ICCAT)

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**APPENDIX II**  
**AGENDA FOR THE 2<sup>ND</sup> PERFORMANCE REVIEW OF THE IOTC**

**Date:** 2–6 February 2015

**Location:** Eden Bleu Hotel, Eden Island, Seychelles

**Time:** 09:00 – 17:00 daily

**Chair:** Mr Terje Lobach; **Vice-Chair:** **TBD**

- 1. OPENING OF THE MEETING** (Secretariat/Chair)
- 2. ADOPTION OF THE AGENDA** (Chair)
- 3. ELECTION OF A VICE-CHAIRPERSON FOR PRIOTC02** (Chair)
- 4. ARRANGEMENTS FOR THE MEETING AND WORK PLAN** (Chair/Secretariat)
- 5. ARRANGEMENTS FOR OTHER RMFOs PARTICIPATION** (Chair/Secretariat)
- 6. UPDATE ON LEGAL REVIEW** (Chair/Secretariat)
- 7. SELECTION OF PRIOTC02 EXPERTS** (Chair)
  - 7.1 Science Expert
  - 7.2 Cost and Benefit Expert
- 8. REVIEW OF INFORMATION CONCERNING THE CRITERIA ADOPTED** (Chair)
  - 8.1 Conservation and management
  - 8.2 Compliance and enforcement
  - 8.3 Decision-making and dispute settlement
  - 8.4 International cooperation
  - 8.5 Financial and administrative issues
  - 8.6 FAO
  - 8.7 First Performance Review
- 9. DATE AND VENUE OF THE NEXT MEETING** (Chair)
- 10. OTHER BUSINESS**
  - 10.1 Membership and other fishing players
- 11. ADOPTION OF THE MEETING REPORT** (Chair)

**APPENDIX III**  
**LIST OF DOCUMENTS**

<b>Document</b>	<b>Title</b>	<b>Availability</b>
IOTC–2015–PRIOTC02–01	Terms of Reference: 2 <sup>nd</sup> Performance Review of the IOTC	✓ (9 September 2014)
IOTC–2015–PRIOTC02–02	Draft: List of documents of the 2 <sup>nd</sup> Performance Review of the IOTC	✓ (9 & 19 January 2015)
IOTC–2015–PRIOTC02–03	Draft: Agenda of the 2 <sup>nd</sup> Performance Review of the IOTC	✓ (9 & 14 January 2015)
IOTC–2015–PRIOTC02–04	Analysis of the IOTC Agreement (T. Lobach: PRIOTC02 Legal expert)	✓ (30 January 2015)
IOTC–2015–PRIOTC02–05	Draft: List of participants to the 2 <sup>nd</sup> Performance Review	✓ (4 February 2015)
<b><i>Conservation and Management</i></b>		
IOTC–2015–PRIOTC02–CM01	Status of living marine resources	✓ (26 December 2014)
IOTC–2015–PRIOTC02–CM02	Data collection and sharing	✓ (15 January 2015)
IOTC–2015–PRIOTC02–CM03	Quality and provision of scientific advice	✓ (15 January 2015)
IOTC–2015–PRIOTC02–CM04	Adoption of Conservation and Management Measures	✓ (14 January 2015)
IOTC–2015–PRIOTC02–CM05	Capacity management	✓ (15 January 2015)
IOTC–2015–PRIOTC02–CM06	Compatibility of management measures	✓ (15 January 2015)
IOTC–2015–PRIOTC02–CM07	Fishing allocations and opportunities	✓ (15 January 2015)
<b><i>Compliance and Enforcement</i></b>		
IOTC–2015–PRIOTC02–CE01	Flag State duties	✓ (19 January 2015)
IOTC–2015–PRIOTC02–CE02	Port State measures	✓ (15 January 2015)
IOTC–2015–PRIOTC02–CE03	Monitoring, control and surveillance (MCS)	✓ (15 January 2015)
IOTC–2015–PRIOTC02–CE04	Follow-up on infringements	✓ (15 January 2015)
IOTC–2015–PRIOTC02–CE05	Cooperative mechanisms to detect and deter non-compliance	✓ (19 January 2015)
IOTC–2015–PRIOTC02–CE06	Market-related measures	✓ (15 January 2015)
IOTC–2015–PRIOTC02–CE07	Fishing Capacity	✓ (19 January 2015)
<b><i>Decision-Making and Dispute Settlement</i></b>		
IOTC–2015–PRIOTC02–DD01	Decision-making	✓ (14 January 2015)
IOTC–2015–PRIOTC02–DD02	Dispute settlement	✓ (14 January 2015)
<b><i>International Cooperation</i></b>		
IOTC–2015–PRIOTC02–IC01	Transparency	✓ (15 January 2015)
IOTC–2015–PRIOTC02–IC02	Relationship to Cooperating Non-Contracting Parties	✓ (15 January 2015)
IOTC–2015–PRIOTC02–IC03	Relationship to Non-Cooperating Non-Members (Non-CPCs)	✓ (15 January 2015)
IOTC–2015–PRIOTC02–IC04	Cooperation with other RFMOs	✓ (15 January 2015)
IOTC–2015–PRIOTC02–IC05	Special requirements of developing States	✓ (15 January 2015)
IOTC–2015–PRIOTC02–IC06	Participation	✓ (15 January 2015)
<b><i>Financial and Administrative Issues</i></b>		
IOTC–2015–PRIOTC02–FAI01	Availability of resources for IOTC activities	✓ (20 January 2015)
IOTC–2015–PRIOTC02–FAI02	Efficiency and cost-effectiveness	✓ (20 January 2015)
<b><i>FAO</i></b>		
IOTC–2015–PRIOTC02–FAO01	Support to IOTC	✓ (21 January 2015)

Document	Title	Availability
<b><i>First Performance Review</i></b>		
IOTC-2015-PRIOTC02-PR01	1 <sup>st</sup> Performance Review: Recommendations and implementation progress	✓ (14 January 2015)
<b><i>Information papers</i></b>		
IOTC-2015-PRIOTC02-INF01	Science Expert EOI No. 1	✓ (30 January 2015)
IOTC-2015-PRIOTC02-INF02	Science Expert EOI No. 2	✓ (30 January 2015)
IOTC-2015-PRIOTC02-INF03	Science Expert EOI No. 3	✓ (30 January 2015)
IOTC-2015-PRIOTC02-INF04	Cost and benefit Analysis EOI No. 1	✓ (30 January 2015)
IOTC-2015-PRIOTC02-INF05	Cost and benefit Analysis EOI No. 2	✓ (30 January 2015)
IOTC-2015-PRIOTC02-INF06	Science Expert EOI No. 4	✓ (4 February 2015)

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**APPENDIX IV**  
**ANALYSIS OF THE IOTC AGREEMENT**

The agreement for the establishment of IOTC was approved by the FAO Council in 1993, and entered into force in 1996. Since the IOTC legal framework was negotiated, several international instruments concerning the management of world fishery resources have been agreed. These include the UN Fish Stocks Agreement (UNFSA),<sup>1</sup> the FAO Port State Agreement,<sup>2</sup> the FAO Compliance Agreement,<sup>3</sup> the FAO Code of Conduct for Responsible Fisheries (the Code) and a number of international action plans, such as the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), the FAO International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds), the FAO International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks) and the FAO International Plan of Action for the Management of Capacity (IPOA-Capacity). Furthermore FAO has developed International Guidelines for Management of Deep-Sea Fisheries in the High Seas and International Guidelines on Bycatch Management and Reduction of Discards and most recently Guidelines for Securing Sustainable Small-scale Fisheries. While UNFSA, the Port State Agreement and the Compliance Agreement entail legally binding obligations on parties, all these other instruments are voluntary. They serve as guidelines/toolboxes for conservation and management of fish stocks, including some specific options for States and regional fisheries management organisations (RFMOs). The UN General Assembly annually addresses fisheries issues, among other things calling upon States, individually or through RFMOs, to address numerous topics in order to achieve sustainable fisheries. Furthermore several declarations, both ministerial and other, have called for specific actions to address conservation and management of fish stocks. FAO is continuously working on issues related to fishing, by among other things producing analysis as well as convening workshops, seminars and consultations. In addition, the FAO Committee of Fisheries (COFI), that meets biennially, addresses a wide range of fisheries issues, and the five tuna-RFMOs have agreed to a Course of Action (the Kobe process) that emphasizes actions required to improve performance by those RFMOs,

Other global instruments, which partly deal with fisheries related issues include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Agreement on the Conservation of Albatrosses and Petrels (ACAP) and the Convention on Biological Diversity (CBD).

Descriptions of the abovementioned instruments and processes are contained in the Annex.

New and/or amended RFMO agreements/conventions build on the global instruments developed under the auspices of the United Nations and the FAO. Many of the principles for management of fish stocks in those instruments overlap. It should be mentioned, however, that the major sources of inspiration seem to be found in the Code and particular in UNFSA. Consequently the most appropriate approach in undertaking an assessment of the IOTC Agreement, would be to compare it with the two tuna-agreements developed after the adoption of UNFSA and the Code in 1995, namely the Antigua Convention, which is the new legal framework of the Inter-American Tropical Tuna Convention (IATTC) and the Western Central Pacific Fisheries

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<sup>1</sup> Its full title is: “Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks”.

<sup>2</sup> Its full title is: “Agreement on Port State Measures to Prevent, Deter, Eliminate Illegal, Unreported and Unregulated Fishing”.

<sup>3</sup> Its full title is: “Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas”.

Commission (WCPFC). The recent development within the General Fisheries Commission for the Mediterranean (GFCM) is also highly relevant and thus considered as GFCM is, like IOTC, a regional fisheries body established under Article XIV of the FAO constitution. A series of amendments to the GFCM Agreement was approved by the FAO Council in November 2014.

## 1 Preamble

For obvious reasons the preamble of the IOTC Agreement does not recognise important instruments such as UNFSA, the Compliance Agreement, the Code and its international plans of action. These instruments are referred to in the Antigua Convention and the newly amended GFCM Agreement, stressing the need to implement the principles and standards in the Code, action plans and the Compliance Agreement. The Antigua Convention notes the adoption of UNFSA, while the amended GFCM Agreement recalls both UNFSA and the Compliance Agreement. The WCPFC Convention recalls the relevant provisions of the LOS Convention and UNFSA, while there is no specific reference to instruments developed under the auspices of FAO. The amended preamble of the GFCM Agreement and the preamble of the WCPFC Convention note that effective conservation and management require the application of the precautionary approach and the best scientific information available, and to take into account ecosystem considerations as it recognises the need to avoid adverse impact on the marine environment, preserve biodiversity as well as to maintain the integrity of marine ecosystems. Additional point in the amended GFCM preamble include recognition of the economic, social and nutritional benefit deriving the sustainable use of living marine resources, the need to involve fishers and non-governmental organisations in decision-making processes and to take actions to combat illegal, unreported and unregulated (IUU) fishing.

## 2 Use of terms

The IOTC Agreement does not contain a provision on “definitions”/“use of terms”, but some terms are found in various provisions throughout the text. In article I the terms “the Commission” and “FAO” are introduced, and “the Area” is referred to in article II. Article III defines “stocks” and article IV, paragraph 5 refers to “whose vessels”. This latter paragraph also refers to “Member Organization”, which presumably is meant to cover vessels flying the flag of a member of the European Union. “Member Organization” is not defined, but “regional economic integration organizations” is defined in sub-paragraph 1(a)(iii). Finally article V, sub-paragraph 2(f) refers to “Director-General”, and article VIII, paragraph 1 refers to “Secretary”.

The Antigua Convention, the WCPFC Convention and the amended GFCM Agreement contain definitions of “fishing”/“fishing activities”, “fishing vessel”/“vessel”, while the amended GFCM Agreement also define “fishing capacity”, “fishing effort” and “fishing related activities”. Although the IOTC Agreement uses the terms “fishing” and “vessel”, these are not defined.<sup>4</sup>

## 3 Membership (Article IV)

Article IV of the IOTC Agreement contains details about who are entitled to become members of the organisation. In general membership is restricted to members and associate members of FAO. However, States

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<sup>4</sup> The term “fisheries” is used in article V(2)(a) and (d), but this is probably just due to sloppy drafting.

that are not members of FAO, but members of the United Nations,<sup>5</sup> might be admitted to become parties of IOTC, provided that their application receives support by two-thirds of the IOTC parties. In addition, both categories of applicants must either be a coastal State wholly or partly situated within the Convention area or vessels flying their flag fishing for stocks covered by the IOTC Agreement.<sup>6</sup>

Article 8 of UNFSA provides that membership should be open to those States with a real interest in the fisheries. Although the term “real interest” is not defined, it seems to be understood that members of RFMOs at least should include coastal States situated within or facing the RFMO’s regulatory area and States fishing for stocks in the area. UNFSA applies also to fishing entities,<sup>7</sup> meaning that if such entities have a real interest in a fishery managed by an RFMO should be entitled to become members of that RFMO.

Concerning IAATC, parties to the previous Convention of 1949 are entitled to become party also to the Antigua Convention, and this entitlement further applies to States with a coastline bordering the Convention area and those who have a history of fishing for stocks covered by the Antigua Convention.<sup>8</sup> The WCPFC Convention lists those States who are entitled to become members by ratification,,<sup>9</sup> while others might become members by accession after the Convention entered into force given they have vessels and nationals wishing to conduct fishing in the Convention area for stocks covered by the Convention. Accession requires consensus.

Both the Antigua Convention and the WCPFC Convention recognise fishing entities, and would allow them to participate in the work by the respective commissions.<sup>10</sup> In accordance with the provisions of the Antigua Convention a fishing entity might become a member of the Commission if it has expressed its formal commitment to abide by the terms of the Convention and comply with the conservation and management measures. Pursuant to the WCPFC Convention a fishing entity may participate in its work, including decision-making, given that the fishing entity has agreed to be bound by the established regime by a written instrument delivered to the depositary. Only a few technical and clarifying changes are made to the membership provision of amended GFCM Agreement, which means that only members or associate members of the FAO and such non-member States of the United Nations may join the organization.<sup>11</sup>

## **4 Objective, functions and responsibilities of the Commission (Article V)**

### **4.1 Objective**

According to article V(1) of the IOTC Agreement the objective is “to promote cooperation among its members with the view to ensuring, through appropriate management, the conservation and optimum utilization of

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<sup>5</sup> Members also of any of the United Nations Specialized Agencies or of the International Atomic Energy Agency might become parties to IOTC. It is, however, rather unclear to envisage the possible role that the latter might play within the organisation, and an identical reference in the GFCM Agreement was removed from the amended version of last year.

<sup>6</sup> A regional economic integration organisation might also become a member of IOTC, provided that a State which is a member of such an organisation has transferred competence of matters under purview of IOTC to the said organisation, cf. article IV(1)(a)(iii).

<sup>7</sup> Cf. article 1 of UNFSA.

<sup>8</sup> Cf. article XXVII of the Antigua Convention about signature, compared to article XXIX about ratification, acceptance and approval as well as article XXX about accession.

<sup>9</sup> Cf. article 34 of the WCPFC about signature, ratification, acceptance and approval.

<sup>10</sup> See article XXVIII of the Antigua Convention and article 9 and annex I of the WCPFC.

<sup>11</sup> See Article 4 of the amended GFCM Agreement.



stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks”.

The objective of the Antigua Convention is “to ensure the long-term conservation and sustainable use of fish stocks covered by the Convention, in accordance with relevant rules of international law”, while the objective of the WCPFC Convention is “to ensure, through effective management, the long-term conservation and sustainable and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the 1982 Convention and the Agreement”.<sup>12</sup> The objective of amended GFCM Agreement is “to ensure the conservation and sustainable use, at the biological, social, economic and environmental level, of living marine resources...”.<sup>13</sup>

Although the Code and UNFSA promote “optimum utilisation” as one goal,<sup>14</sup> it should be noted that none of these recent RFMO instruments, unlike the IOTC Agreement, refers to “optimum utilisation of stocks” as an objective.

The IOTC objectives are furthermore incorporated into a provision also setting out the functions and responsibilities of the Commission, and the promotion of “optimum utilisation” is referred to twice.<sup>15</sup> The legislative frameworks of other RFMOs have stand-alone provisions spelling out their objectives.

## 4.2 General principles

The IOTC Convention does not contain general or management principles per se. Principles might, however, indirectly be found in article V, describing functions of the Commission. The provision includes a general reference to principles expressed in the relevant provisions of the LOS Convention. When carrying out the functions and responsibilities, the Commission shall i) review, analyse and disseminate scientific information and other data, ii) encourage, recommend and coordinate research and development activities, iii) adopt, on the basis of scientific evidence, conservation and management measures, iv) keep under review economic and social aspects and v) to carry out such other activities as may be necessary to fulfil the objectives. In article V, paragraph 3 there is a saving clause, giving the Commission power to “adopt decisions and recommendations, as required, with a view to furthering the objectives of this Agreement”.

The Code contains provisions on fisheries management, which include data gathering and management advice, application of the precautionary approach, the establishment of management measures as well as their implementation.<sup>16</sup> Article 5 of UNFSA sets out the general principles to be applied by coastal States and States fishing on the high seas in order to conserve and manage straddling fish stocks and highly migratory fish stocks. Article 5 provides, among other things, that in order to conserve the stocks concerned, States are required to adopt measures to ensure their “long term sustainability” and promote the objective of their optimum utilization, to ensure that such measures are based on the best scientific evidence available and to apply the precautionary approach in accordance with article 6 of UNFSA.

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<sup>12</sup> The term “Agreement” in the WCPFC text means UNFSA.

<sup>13</sup> See amended article 2. The old Article III stated that «the purpose of the Commission shall be to promote the development, the rational management and best utilization of marine living resources»

<sup>14</sup> Articles 7.1.1 and 12.1 of the Code and articles 5(a) and 7(1)(b) of UNFSA.

<sup>15</sup> In paragraphs 1 and 2(c).

<sup>16</sup>Article 7 of the Code.



It is recognized that fishing activities can affect the functioning and state of marine ecosystems. Some of the provisions of article 5 include language, which could be regarded as references to so-called ecosystem approaches, as they promote the protection of marine ecosystems and the protection of biodiversity in the marine environment. States are further called upon to minimize pollution, waste, discards, catch by lost or abandoned gear; catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species. The provisions on application of the precautionary approach and of ecosystem approaches to fishing activities, are now often associated with common standards for the conservation of living marine resources, as referred to in the relevant provisions of the LOS Convention.<sup>17</sup>

In addition, measures shall be taken to prevent or eliminate over-fishing and excess capacity and to ensure that levels of fishing effort do not exceed those commensurate with sustainable use of fishery resources. Excess capacity is often caused by open access regimes, which often leads to a race by individual vessels to catch as much fish as possible, as quickly as possible. Consequently States are obliged to monitor their fishing capacity, and establish adequate schemes or measures to address excess capacity when needed.

States are further required to collect, share and complete accurate data concerning fishing activities on, among other things, vessel position, catch and fishing effort, as set out in Annex I of UNFSA, as well as information from national and international research programmes. As for the stocks concerned, it is clear that most data collection and sharing are carried out under the auspices of scientific bodies of relevant RFMOs or international institutions providing advice to RFMOs. These bodies are, however, dependent on data provided by national scientists and institutions, descending from both high seas and coastal State waters.

In order to protect the living marine resources and preserve the marine environment, article 6 of UNFSA requires States to apply the precautionary approach to conservation and management of straddling fish stocks and highly migratory fish stocks. Annex II of UNFSA provides guidance for the application of precautionary reference points in conservation and management of the stocks concerned. The aim of the application of the precautionary approach to fisheries management is to reduce the risk of overexploitation and depletion of fish stocks. The use of precaution is required at all levels of the fishery system, including management decisions, research, technology development as well as institutional frameworks.

The Antigua Convention and the amended GFCM agreement contain provisions on the application of the precautionary approach, making also cross-references to the relevant parts of the Code and UNFSA.<sup>18</sup> It should be noted that the IATTC Commission shall be more cautious when information is uncertain, unreliable or inadequate. Furthermore the Antigua Convention implements the provisions of UNFSA concerning the adoption of measures for species belonging to the same ecosystem or associated with or dependant upon the target stocks; the adoption of measures to minimize waste, discards, catch by lost or abandoned gear, catch of non-target species, and impacts on associated or dependant species, in particular endangered species.<sup>19</sup> The amended GFCM Agreement also focuses on similar principles, but includes additional points such as ensuring economic and social viability of fisheries, paying particular attention to the potential impacts on small-scale fisheries and local communities as well as combatting IUU fishing.

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<sup>17</sup>Articles 61(3) and 119(1)(a) of the LOS Convention.

<sup>18</sup> Article IV of the Antigua Convention and Article 5(c) of the amended GFCM Agreement.

<sup>19</sup> Article VII of the Antigua Convention.

These management principles in essence mirror the relevant provisions of the Code and UNFSA, as well as some new ideas are spelled out in specific provisions of the WCPFC Convention and the amended GFCM Agreement,<sup>20</sup> but not in the Antigua Convention.

### 4.3 Functions of the Commission

The functions of the Commission are described in article V, paragraph 2 of the IOTC Agreement. As mentioned above, the provision includes a general reference to principles expressed in the relevant provisions of the LOS Convention. When carrying out the functions and responsibilities, the Commission shall i) review, analyse and disseminate scientific information and other data, ii) encourage, recommend and coordinate research and development activities, iii) adopt, on the basis of scientific evidence, conservation and management measures, iv) keep under review economic and social aspects and v) to carry out such other activities as may be necessary to fulfil the objectives. In article V, paragraph 3 there is a saving clause, giving the Commission power to “adopt decisions and recommendations, as required, with a view to furthering the objectives of this Agreement”.

The WCPFC Convention and the Antigua Convention require their respective commission to perform several additional and specific functions.<sup>21</sup> These are: i) determination of the total allowable catch or total level of fishing effort, ii) adoption of standards for collection, verification and timely exchange and reporting of data,<sup>22</sup> iii) application of the precautionary approach,<sup>23</sup> iv) adoption of conservation and management measures for non-target species and species dependent on or associated with target stocks, with a view to maintaining or restoring populations of such species above levels at which their populations may become seriously threatened, v) determination the extent to which the interests of new members might be accommodated, vi) adoption of measures related to fishing capacity, and vii) allocation of the total allowable catch or the total level of fishing effort (capacity).<sup>24</sup>

The Antigua Convention contains some additional Commission functions, which are not referred to neither in the IOTC Agreement nor in the WCPFC Convention. These functions are: i) adoption of appropriate measures to avoid, reduce and minimise waste, discards, catch by lost or discarded gear, catch of non-target species and impacts on associated or dependant species, in particular endangered species,<sup>25</sup> ii) promotion of the development and use of selective, environmental safe and cost-effective fishing gear and techniques, and iii) promotion of the application of any relevant provision of the Code and its IPOAs. In addition WCPFC is

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<sup>20</sup> See Part II of the WCPFC Convention and Article 55 of the amended GFCM Agreement.

<sup>21</sup> See article VII of the Antigua Convention, article 10 of the WCPFC Convention and Article 8 of the amended GFCM Agreement.

<sup>22</sup> In the WCPFC Convention such standards shall be in accordance with annex I of UNFSA, which forms an integral part of the Convention, cf. article 10 (1) (d).

<sup>23</sup> It should be noted that there is no specific reference to the application of the precautionary approach in the functions of the WCPFC Commission, but the Convention contains a stand-alone provision on the topic, cf. Article 6. The Antigua Convention also contains a specific provision on the application of the precautionary approach (article IV), but there is made a cross-reference to it in the functions of the Commission, including a qualifier. This underpins of course the importance emphasised on these principles.

<sup>24</sup> The WCPFC Convention even contains an extensive list of elements to be taken into account when developing criteria for allocation, cf. article 10 (3).

<sup>25</sup> In the WCPFC Convention similar wording is referred to in the provision on principles and measures for conservation and management, see article 5(e), but not in article 10, dealing with the functions of its Commission. As these are principles concerning the Convention as a whole, they should thus also be taken into account when the Commission performs its functions.

mandated to establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement, including a vessel monitoring system (VMS).

The amended GFCM Agreement focuses on the following specific functions, which are additional to those referred to in the IOTC Agreement: i) minimize impacts for fishing activities on living marine resources and their ecosystems, ii) adopt multiannual management plans applied in the totality of the relevant sub-regions based on an ecosystem approach, iii) establish fisheries restricted areas for the protection of vulnerable marine ecosystems, including but not limited to nursery and spawning areas, iv) take action to prevent, deter and eliminate IUU fishing, including mechanisms for effective monitoring, control and surveillance, v) resolve situations of non-compliance, including through an appropriate system of measures, vi) promote the development of institutional capacity and human resources, particularly through education, training and vocational activities, and vii) enhance communication and consultation with civil society concerned with fisheries.<sup>26</sup>

## 5 Observers (Article VII)

Article VII of the IOTC Agreement deals with the role of observers, giving non-members, intergovernmental and non-governmental organisations the possibility to attend IOTC meetings.

Article 12 of UNFSA requires transparency in the decision-making processes and other activities of RFMOs. All RFMOs have publicly accessible websites, which include meeting minutes, reports and scientific information. Many RFMOs have amended their rules of procedures for commission meetings or agreed on specific guidelines and criteria for observer status in order to meet the obligations under article 12(2) of UNFSA, including IOTC. In the Antigua and WCPFC Conventions provisions similar to article 12 of UNFSA are incorporated.<sup>27</sup>

## 6 Administration (Article VIII)

As mentioned above, IOTC is an organisation established under article XIV of the FAO Constitution, implying that FAO financial regulations and staff rules apply. The Secretary and all staff are employed by FAO. The provisions concerning the duties of the Secretary set out in article VII of the IOTC Agreement, are, however, quite similar to those of RFMOs outside the FAO framework.<sup>28</sup> Likewise is the provision concerning the secretariat in the amended GFCM Agreement.<sup>29</sup>

## 7 Decision-making

Provisions concerning decision-making are found in four different articles of the IOTC Agreement; article VI on sessions of the Commission, article IX regarding procedures concerning conservation and management measures, in the finances provision in article XIII and in article XX on amendments. Many other RFMO agreements contain stand-alone provisions for decision-making, underpinning their importance.<sup>30</sup>

<sup>26</sup> See article 8 of the amended GFCM Agreement.

<sup>27</sup> See article XVI of the Antigua Convention and article 21 of the WCPFC.

<sup>28</sup> See article XII of the Antigua Convention and articles 15 and 16 of the WCPFC Convention. The latter includes also details about the functions of the secretariat.

<sup>29</sup> See article 10.

<sup>30</sup> For example article IX of the Antigua Convention, article 20 the WCPFC Convention

Decisions and recommendations of the IOTC Commission shall as a general rule be taken by a majority vote. Adoption of conservation and management measures as well as the adoption and amendments of Rules of Procedure requires, however, two-thirds majority. The budget shall be adopted by consensus, but if consensus cannot be reached, the budget shall be adopted by two-thirds majority. Amendments to the IOTC Agreement requires a three-quarters majority.

Decision-making based on voting is the traditional process agreed to in most RFMOs. Some RFMOs require that decisions of substance shall be taken by consensus. The Antigua Convention intends to operate under consensus. Notwithstanding the formal procedures established by many RFMO, the practice in most RFMOs is to rely on decision-making based on consensus. The notion of “consensus” is typically defined as the adoption of a decision without any vote or formal opposition at the time of adoption.<sup>31</sup>

Members of IOTC have a opportunity to object to conservation and management measures, and thereby not being bound by the measure in question. Grounds for the right to object in some other organisations are restricted,<sup>32</sup> and the amended GFCM Agreement requests the objecting member in written form to explain the reasons for objecting, and where appropriate, proposals for alternative measures.<sup>33</sup>

Article 10 of UNFSA sets out standards for decision-making in RFMOs whereby States shall cooperate by agreeing “on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner.” As a point of departure, all members of an RFMO should be entitled to take part in decision-making. In most RFMOs, however, members who are two years behind with their financial contributions to the budget lose their voting rights until the debt has been paid. Such a provision is also found in article XIII (8) of the IOTC Agreement.

In the WCPFC Convention, a system of chambered voting exists in the sense that the three quarters majority must include three quarters of the members of the Forum Fisheries Agency and three quarters of the other members. Decisions on allocation and some other matters, such as budget and admission of new members require consensus. The WCPFC Convention provides that a decision cannot be defeated by two votes or a single vote.

## **8 Implementation (Article X) and information (Article XI)**

Although it’s obvious that members of RFMOs shall implement decision to which they are bound, taking into account the decision-making process, most RFMO agreements make this very clear by including a provision on the obligation in the statutory document.

The IOTC Agreement contains references to member’s duties in article X about implementation and in article XI about information to be provided. Article X includes a variety of topics relevant to implementation, such as adoption of national legislation, the duty of members for imposing adequate penalties for violations of

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<sup>31</sup> The Antigua Convention defines consensus as “the adoption of decisions without voting and without any express objections being stated”, cf. article 1.5, while the WCPFC Convention defines consensus as “the absence of formal objection at the time the decision was taken”, cf. article 20.

<sup>32</sup> An example is that WCPFC members are entitled to object only if the decision is inconsistent with the provisions of the Convention, with UNFSA or the LOS Convention, or it unjustifiably discriminates in form or fact against the member concerned, cf. article 20 (6) (a) and (b).

<sup>33</sup> See article 13, paragraph 3 of the amended GFCM Agreement.

IOTC measures and providing statements on actions taken in that regard. The provision also mandates IOTC parties, through the Commission, to establish a system for monitoring, control and surveillance as well as monitoring activities of non-members.<sup>34</sup> Article XI deals with member's obligations to submit data and provide the Commission with copies of domestic legislation relevant to the implementation of IOTC measures.

Other RFMO instruments contain similar provisions, but recent instruments are more extensive and explicit when referring to member duties and possible consequences of failing implementation. The amended GFCM Agreement requires parties to report on how they have implemented and/or transposed adopted recommendations into legislative documents, to submit information on monitoring and control of their fisheries, and each party shall take measures to ensure that their duties as flag States and port States are fulfilled. The GFCM Commission will address parties that fail to comply with the recommendation, and shall define appropriate measures to be taken when parties are identified as being in prolonged and unjustified non-compliance.<sup>35</sup>

The Antigua Convention also put emphasises on the duty of one party to take actions when a vessel flying the flag of another party is suspected of being engaged in activities that undermines the effectiveness of applicable measures and there are some obligations concerning landing and processing of fish.<sup>36</sup> It should be noted, however, that many other agreements distinguish between measures for control and enforcement purposes and other obligations. The WCPFC Convention contains a stand-alone provision on obligations of members of the Commission, which include the duty to implement relevant decisions as well as the information required being submitted by parties.<sup>37</sup> In addition, WCPFC members shall take measures to ensure that its nationals, and fishing vessels owned or controlled by its nationals comply with the provisions of the Convention.<sup>38</sup>

## 9 Subsidiary bodies (Article XII)

Article XII of the IOTC Agreement requires the establishment of a permanent Scientific Committee. The Agreement does not, however, give any guidance on functions or tasks of this permanent body, nor is there any formal link between the Scientific Committee and the Commission. On the contrary, the Commission may establish sub-commissions to deal with one or more stocks covered by the IOTC Agreement, which are mandated to keep under review and gather information, assess and analyse conditions and trends as well as coordinate research and studies on the stocks concerned. Coordination of research is also explicitly referred to as the power of the Commission.<sup>39</sup> Membership in those sub-committees is limited to those coastal States lying on the migratory path of the stocks concerned and States whose vessels fish on those stocks.<sup>40</sup> A sub-commission shall report to the Commission on its findings, and shall make recommendations on actions to be

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<sup>34</sup> It would be more appropriate to include article X,(3) and (4) about the mandate to establish appropriate MCS-systems into article V concerning objectives, functions and responsibilities of the Commission.

<sup>35</sup> Cf. article 14 of the amended GFCM Agreement.

<sup>36</sup> Cf. paragraphs 6, 7 and 9 of article XVIII of the Antigua Convention.

<sup>37</sup> See article 23 of the WCPFC Convention.

<sup>38</sup> See Article 23(5) of the WCPFC Convention.

<sup>39</sup> See article V(2)(b) of the IOTC Agreement.

<sup>40</sup> The reference to "States" whose vessels participate in the fisheries of these stocks, exclude by definition vessels flying the flag of an EU member, as only "members of the Commission" is defined to include a regional economic integration organization, cf. article IV(1) of the Agreement.

taken to obtain scientific information as well as proposals for conservation and management measures, putting a question-mark on the formal role the Scientific Committee.

Article 12 of the Code emphasises the importance of sound scientific basis to assist in fisheries management, and gives a wide range of guiding principles on how States could establish such a basis, notably through fisheries research. Article 5 of UNFSA requires parties to collect, share and complete accurate data concerning fishing activities on, *inter alia*, vessel position, catch and fishing effort, as set out in its Annex I, as well as information from national and international research programmes. Furthermore, article 14 of UNFSA sets out criteria for the collection and provision of such information, also through RFMOs, and cooperation in scientific research. As for the stocks concerned, it is clear that most data collection and sharing are carried out under the auspices of scientific bodies of relevant RFMOs or international institutions providing advice to RFMOs. These bodies are, however, dependent on data provided by national scientists and institutions.

Both the Antigua Convention and the WCPFC Convention require the establishment of scientific committees, and contain specific provisions for their functions, including a formal linkage between the committees and their respective commissions.<sup>41</sup> The Antigua Convention and the WCPFC Convention also contain provisions for the functions of scientific staff and scientific services,<sup>42</sup> and unlike the IOTC Agreement, the scientific experts are given specific tasks and guidance through the basic documents.

## 10 Finances (Article XIII)

The availability of adequate financial resources is critical to the effective functioning of an RFMO. Article XIII of the IOTC Agreement gives the framework for the financial arrangements. In essence the provision empowers the Commission to adopt a budget and to establish a contribution formula as well as obligations on members to contribute in accordance with that agreed formula. IOTC has adopted a scheme for calculation of contributions to the administrative budget of the Commission, which is an annex to the financial regulations.

Formula commonly takes into account variable factors such as national wealth, the state of development of the member concerned and the amount of catch taken by each individual member. The IOTC Convention states that in addition to an equal share, consideration shall be given to catches and landings as well as per capita income of each member. It should be noted that the WCPFC Convention, in addition to considerations similar to those of IOTC, also should take into account the ability of members to pay.<sup>43</sup>

Many RFMOs have established permanent subsidiary bodies to deal with financial issues, which are responsible for reviewing the operation of the budget for the current year and examining the draft budget for the coming year. Financial committees are not, however, established through the conventions itself, but more likely in accordance with powers given to the Commission. Being an organisation set up under article XIV of FAO, IOTC has special relations to FAO concerning financial issues. This is reflected in article V about the objective, functions and responsibilities of the Commission requiring the accounts and autonomous budget to be transmitted to the Director-General of FAO, and article VI about sessions of the Commission stating that the financial regulations shall be consistent with principles embodied in the Financial Regulations of FAO. The Finance Committee of FAO has the power to disallow the IOTC financial regulations and any amendments thereto if it finds them inconsistent with the FAO Financial Regulations.

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<sup>41</sup> Cf. article XI of the Antigua Convention and its annex 4, and article 12 of the WCPFC Convention.

<sup>42</sup> Cf. article XII and article 13 respectively.

<sup>43</sup> Cf. article 18.2 of the WCPFC Convention.

In all RFMOs, except for IOTC, adoption of the budgets of the organization require consensus. In IOTC voting may take place also on the budget if the efforts to achieve consensus fail.

## **11 Cooperation with other organizations and institutions (Article XV)**

The need for enhanced cooperation between RFMOs arises from the fact that for example tuna and tuna-like species are wide-ranging and are found in the regulatory areas of more than one RFMO, and that fishing fleets may target similar stocks in different parts of the world. Active cooperation between RFMOs has become very important when addressing over-capacity, IUU fishing and other issues. An example in this regard is the Kobe process. Most RFMO agreements contain provisions on cooperation, also the IOTC Agreement.<sup>44</sup> The amended GFCM Agreement has also specified suitable arrangements for consultation, cooperation and collaboration with relevant organizations and institutions, including entering into memoranda of understanding and partnership agreements.<sup>45</sup>

It is particularly important to cooperate where conservation and management measures may overlap. In the Central Pacific, there is an overlapping competence between IATTC and WCPFC, and the WCPFC Convention contains a provision requiring active cooperation with IATTC in the establishment of conservation and management measures.<sup>46</sup> A reciprocal obligation exists in the Antigua Convention.<sup>47</sup>

## **12 Coastal States' rights (Article XVI)**

The rights of the coastal States deriving from part V of the LOS Convention are reflected in Article XVI of the IOTC Agreement. Similar references are incorporated into other RFMO instruments, but in most cases as a clause in a provision dealing with application and/or a general stand-alone provision on relationship with other treaties.<sup>48</sup>

Many RFMO instruments also contain a provision on the need for compatibility between management measures for the high seas and the national waters. Both the Antigua Convention and the WCPFC Convention contain specific provisions on the topic, the WCPFC being rather detailed by also referring to the elements to be taken into account when determining compatibility.<sup>49</sup>

Article 7 of UNFSA obliges States to develop measures for highly migratory fish stocks that are compatible for the high seas and their national waters. To be effective, conservation measures shall apply throughout their migratory range, irrespective of the legal regimes applicable to the ocean areas in which the stocks migrate. Measures should therefore be concerned with the whole stock unit in its area of distribution, and should be harmonized among all States involved.

## **13 Interpretation and settlement of disputes (Article XXIII)**

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<sup>44</sup> See article XV of the IOTC Agreement..

<sup>45</sup> See Article 16 of the amended GFCM Agreement.

<sup>46</sup> Cf. article 22(4) of the WCPFC Convention.

<sup>47</sup> Cf. article XXIV (3) of the Antigua Convention.

<sup>48</sup> See Article 20 of the amended GFCM Agreement.

<sup>49</sup> Cf. article V of the Antigua Convention and article 8 of the WCPFC Convention.



Article XXIII of the IOTC Agreement sets out how possible disputes shall be settled. Any dispute regarding the interpretation or application of the agreement shall be referred for settlement to a conciliation procedure to be adopted by the Commission. If a dispute is not settled by the conciliation procedure, it may be referred to the International Court of Justice, unless the involved members agree to another method of settlement.

International standards for dispute settlement in RFMOs are established by part VIII of UNFSA. Article 27 of UNFSA provides that all disputes shall be settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means chosen by the parties to the dispute. The UNFSA emphasizes that in order to prevent disputes, States shall cooperate with a view to agreeing on efficient and expeditious decision-making procedures within RFMOs and to strengthen existing ones as necessary.

Article 30 of UNFSA provides the application of arrangements in part XV of the LOS Convention also to disputes about UNFSA, about RFMO instruments or about conservation and management measures taken by an RFMO, whether or not they are also parties to the LOS Convention. Part XV of the LOS Convention provides for mandatory procedures leading to a binding decision by the International Court of Justice or the International Tribunal on the Law of the Sea. It should be noted concerning RFMO measures, these mechanisms only apply to parties to UNFSA, and many recent RFMO agreements consequently have adopted their own specific arrangements.

Articles 28 and 29 of the UNFSA provide for the prevention of disputes by efficient and expeditious decision-making procedures and for the prompt resolution of technical disputes by *ad hoc* expert panels. In WCPFC, a member may go along with a consensus and then lodge an objection or request a review by a panel. Details about review panels are set out in the WCPFC Convention and in the amended GFCM Agreement.<sup>50</sup>

The Antigua Convention contains requirement to address disputes,<sup>51</sup> and members of the Commission are required to consult in order to find a quick solution. If this fails, parties to a dispute shall settle the dispute through peaceful means they may agree upon, in accordance with international law. A dispute on technical nature may be referred to a non-binding *ad hoc* expert panel constituted within the framework of the Commission.

A similar approach is taken in the amended GFCM Agreement where the point of departure is to seeking solutions by negotiations, mediation, inquiry or any other peaceful means of their choice. If parties concerned cannot reach agreement, they may jointly refer the matter to a committee whereby its findings, while not binding, shall constitute a basis for renewed consideration by the parties. Any dispute not resolved by these alternatives may, with the consent of the parties, be referred for binding settlement by arbitration under a tribunal constituted as provided to an annex to the agreement.<sup>52</sup>

The WCPFC Convention makes it simple by stating that provisions related to disputes set out in UNFSA part VIII apply, *mutates mutandis*, to any dispute between its members whether or not they are parties to UNFSA.<sup>53</sup>

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<sup>50</sup> See annex II of the WCPFC and the Annex Relating to Arbitration in the amended GFCM Agreement.

<sup>51</sup> Article XXV of the Antigua Convention.

<sup>52</sup> See article 19 and the Annex to the amended GFCM Agreement.

<sup>53</sup> Cf. article 31 of the WCPFC Convention.



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## 15 Special requirements of developing States

Pursuant to article V (2) (b) of the IOTC Agreement, the Commission shall have due regard to the special interests and need of members in the region that are developing States when it comes to transfer of technology, training and enhancement as well as participation in fishing.<sup>54</sup> Developing States are also indirectly recognised concerning financial contribution as a contribution formula shall take into account per capita income of each member.<sup>55</sup>

Several provisions of the Code recognise the special requirements of developing States, in particular article 5. The need for special focus on developing States is also referred to in guidance to RFMOs concerning management objectives and fisheries research.<sup>56</sup> UNFSA acknowledges that lack of/or limited capacity in many developing States is a serious impediment to the implementation of the agreement,<sup>57</sup> and emphasises the need to build capacity and provide technical assistance to developing countries, including financial assistance, assistance relating to human resource development, technical assistance, transfer of technology and advisory and consultative services.<sup>58</sup>

The Antigua Convention contains a provision on cooperation and assistance,<sup>59</sup> giving the Commission power to adopt measures relating to technical assistance, technology transfer, training and other forms of cooperation, to assist developing countries to fulfil their obligations under the Convention, as well as enhance their ability to develop fisheries.

The WCPFC Convention contains extensive provisions relating to the requirements of developing States, mirroring the relevant provisions of UNFSA. It requires the Commission to give full recognition to the special requirements of developing States Parties in relation to conservation and management of fish stocks and development of fisheries for such stocks.<sup>60</sup> The WCPFC Convention goes one step further than, however, by then imposing a specific requirement on the Commission to establish a fund to facilitate the effective participation of developing States parties in the work of the Commission. In addition to the fund, the Convention goes on to specify that cooperation with developing States for the purposes set out in the article may include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology and advisory and consultative services. The provision further sets out some examples of the areas in which such assistance may be directed, including towards improved conservation and management, stock assessment and scientific research and compliance and enforcement.

The amended GFCM Agreement contains a new provision on the recognition of the special requirements of developing states contracting parties, making a cross-reference to the relevant provisions of UNFSA,<sup>61</sup> and

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<sup>54</sup> Here is a reference to “in the region”. This is probably meant to include developing States that are situated wholly or partly within the area of IOTC competence as referred to in article V.

<sup>55</sup> See article XIII (3) (b) of the IOTC Agreement.

<sup>56</sup> Articles 7.2 and 12 of the Code.

<sup>57</sup> Part VII of UNFSA.

<sup>58</sup> Article 25 of UNFSA.

<sup>59</sup> Cf. the Antigua Convention article XXIII.

<sup>60</sup> Article 30 of the WCPFC Convention.

<sup>61</sup> Cf. article 17. Relevant provisions of UNFSA would mean those included in part VII.



stating that expenses for developing States parties could, subject to the availability of funds, be borne by the GFCM Commission.<sup>62</sup>

## 17 Non-members

Pursuant to article IV(1)(3) of the IOTC Agreement, members of the Commission are encouraged to take initiatives towards States which are entitled to become members to accede to the agreement.<sup>63</sup> The agreement does not contain any guidance on how to deter activities by non-members that undermine the effectiveness of applicable conservation and management measures and/or negatively affects the implementation of the objective of the agreement.

It is recognised that RFMOs have a key role as the appropriate medium through which States are to cooperate to achieve and enforce management and conservation both on the high seas and in waters under national jurisdiction. According to article 17 of the UNFSA non-members of RFMOs is not discharged from the obligation to cooperate, in accordance with the LOS Convention and UNFSA, in conservation and management of fish stocks. Members of RFMOs shall exchange information on activities of non-members, and shall take measures to deter activities, which undermine the effectiveness of conservation and management measures. It should also be noted that members of RFMOs are encouraged to request fishing entities to cooperate fully with the RFMO concerned in implementing relevant conservation and management measures, and fishing entities shall enjoy benefits commensurate with their compliance commitments.

The Antigua Convention, the WCPFC as well as the amended GFCM Agreement contain stand-alone provisions on the RFMOs relationship to non-members, reflecting the content of UNFSA provisions.<sup>64</sup>

## 18 Compliance and enforcement

Global organisations and many regional bodies, including IOTC, have taken initiatives to combat IUU fishing.<sup>65</sup> As mentioned above, the IOTC Agreement address compliance and enforcement issues in article X dealing with implementation, requiring the establishment of a system for monitoring, control and surveillance as well as monitoring activities of non-members.<sup>66</sup> IOTC has taken a series of actions to counteract IUU fishing, both binding conservation and management measures as well as non-binding resolutions.

UNFSA places a series of obligations on flag States concerning compliance and enforcement, including immediate and full investigation of alleged violations, prompt reporting on the progress and outcome of the investigation to the relevant RFMO, and if a serious violation has been proven, the requirement not to allow

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<sup>62</sup> See article 12, paragraph 6 of the amended GFCM Agreement.

<sup>63</sup> As described above this does not, however, include fishing entities.

<sup>64</sup> Cf. article XXVI of the Antigua Convention, article 32 of the WCPFC Convention and article 18 of the amended GFCM Agreement.

<sup>65</sup> The IPOA-IUU contains several suggested measures for combating IUU fishing, including those to be used by RFMOs. Also UNFSA and the FAO Compliance Agreement address the issue of IUU fishing, although the term “IUU fishing” was not yet introduced when those treaties were negotiated. Furthermore several declarations, both ministerial and others, have called for specific actions to combat IUU fishing and UNGA through the Sustainable Fisheries Resolution annually addresses the issue. FAO is continuously working on issues related to IUU fishing, and the subject is also regularly on the agenda of the biannually meetings of the FAO Committee of Fisheries (COFI).

<sup>66</sup> It would be more appropriate to include article X (3) and (4) about the mandate to establish appropriate MCS-systems into article V concerning objectives, functions and responsibilities of the Commission.

the vessel to fish on the high seas until such time as imposed sanctions have been complied with. Furthermore, the flag State must ensure that applicable sanctions are adequate in severity to secure compliance and to discourage violations and deprive offenders of the benefits accruing from non-compliance. As mentioned above, the IPOA-IUU calls on States, through RFMOs, to take various actions, such as developing boarding and inspection schemes, implementing VMS and observer programmes, identifying vessels that are engaged in IUU fishing, regulating transshipment operations as well as adopting port inspection schemes, certification and/or trade documentations schemes and other marked-related measures.

The Antigua Convention and the WCPFC Convention contain numerous provisions on monitoring, control, surveillance and enforcement.<sup>67</sup> All these instruments contain specific provisions on member's duties, which include elements on compliance, building on principles set out in the Code, the Compliance Agreement and UNFSA. Furthermore, the responsibilities of members as flag States are described in detail in specific provisions, and all of them, except for the Antigua Convention, include specific provisions on members as port States. The Antigua Convention, however, a duty to cooperate concerning landings of fish, including through adoption of cooperative measures and schemes.<sup>68</sup> The WCPFC Convention contain provisions on the establishment on specific committees mandated to monitor and review compliance.<sup>69</sup> The WCPFC is by far the most detailed instrument also concerning compliance issues, and contains also specific and rather extensive provisions also on a regional observer programme and the regulation of transshipment.<sup>70</sup>

## 19 Final clauses

Articles XVII, XVIII, XIX, XX, XXI, XXII and XXIV of the IOTC Agreement deal with so-called housekeeping issues such as acceptance, entry into force, reservations, amendment, withdrawal, termination and depositary. For RFMOs within the framework of FAO, these provisions are common standards.

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## ANNEX

### Relevant international instruments and processes

#### 1 Global instruments

##### 1.1 The Law of the Sea Convention

The Law of the Sea (LOS) Convention contains a system of maritime zones, describing rights and obligations in each. In a fisheries context, the most relevant areas are the territorial sea, the exclusive economic zone (EEZ) and the high seas. Article 3 declares that a State may establish a territorial sea that extends up to 12

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<sup>67</sup> Cf. in particular articles XVIII and XX of the Antigua Convention and articles 23, 24, 25, 26, 27, 28 and 29 of the WCPFC Convention.

<sup>68</sup> See article XVIII (9) of the Antigua Convention.

<sup>69</sup> See article 14 of the WCPFC Convention.

<sup>70</sup> Cf. articles 28 and 29, including annex III of the WCPFC Convention.



nautical miles from the baselines,<sup>71</sup> while the EEZ is an area beyond and adjacent to the territorial sea, which not shall extend beyond 200 nautical miles from the baselines.<sup>72</sup> Within the territorial sea, the coastal State has exclusive sovereignty over the water, seabed and airspace, but all States have the right of innocent passage through the territorial sea of another State. Within its EEZ a state may among other things explore and exploit the natural resources (living and non-living) found both in the water column and on the seabed. The high seas are the waters beyond the EEZs, and the point of departure is that the “freedom of the seas” applies, but this is modified by some specific provisions in the LOS Convention,<sup>73</sup> and further by UNFSA.

Thus the LOS Convention establishes a regime for the conservation and management of fisheries resources on the basis of the zones where they occur or the types of fish stocks, and States are required to conserve and manage living marine resources in the areas that are within their jurisdiction.<sup>74</sup> States shall cooperate in the management of straddling fish stocks and highly migratory species, and cooperation is also required for the conservation and management of the fish resources in the high seas.<sup>75</sup>

Other provisions relevant particular to fisheries are those of enforcement by the coastal state,<sup>76</sup> and the flag State duties for vessels operating in the high seas.<sup>77</sup>

## 1.2 UNFSA

UNFSA entered into force in December 2001 and is thus binding on its parties. Its objective is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the LOS Convention. In this, the UNFSA elaborates and in particular gives establishes the duty of States pursuant to the LOS Convention article 117 “to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas”. UNFSA establishes a set of rights and obligations for States to conserve and manage the two types of stocks, associated and dependent species as well as to protect biodiversity in the marine environment. The Agreement improves the legal regime for regional cooperation concerning these stocks, and identifies RFMOs as the mechanism through which States can fulfil their obligations to conserve and manage the stocks.<sup>78</sup> States having a real interest in the fisheries concerned are encouraged by the agreement to become members of such RFMOs. It is obvious that States fishing from the stocks as well as coastal States in whose waters they occur have “a real interest”. Further it may be argued that port States involved in landings and transshipments of the stocks concerned have such an interest.

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<sup>71</sup> The baseline is the low-water line along the coast or a straight baseline, cf. articles 5-7 and 9-14 for explanations of how the baselines are determined. On the landward side of the baselines are the internal waters.

<sup>72</sup> See articles 55 and 57.

<sup>73</sup> Article 87(1)(e), cf. articles 116-119.

<sup>74</sup> Article 61(conservation of the living resources), article 62 (utilization of the living resources), article 63 (cooperation on transboundary stocks and straddling stocks) and article 64 (highly migratory species).

<sup>75</sup> Articles 63, 64, 118 and 119.

<sup>76</sup> Article 73 – Enforcement of laws and regulations of the coastal State

<sup>77</sup> Cf. article 93.

<sup>78</sup> Articles 8-17 of UNFSA.

The Agreement stipulates that only those States that are members of the relevant organization, or that agree to apply the measures established by the organization, shall have access to the fisheries resources in question. Other States are excluded from the relevant fishery.

UNFSA provides for reinforcement of flag State duties concerning control over fishing vessels, and also contains enhanced compliance control mechanisms, including strengthened enforcement by flag States and port States. These latter duties are related to high seas fisheries, but it could be argued that they are becoming common standards relevant to all fishing operations.

UNFSA establishes a unique exception to the principle of exclusive flag State jurisdiction by creating a system of regional cooperation for enforcement of regionally agreed measures against vessels that are suspected to violate them, cf. article 21.

Although the main objective of UNFSA is related to the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, articles 5 (general principles), 6 (application of the precautionary approach) and 7 (compatibility of conservation and management measures) nevertheless also apply to the conservation and management of the stocks in areas under national jurisdiction.<sup>79</sup> Thus these provisions apply also to coastal States not involved in fishing on the high seas.

UNFSA further fully recognises the special requirements of developing States in the conservation and management of fish stocks, whether they occur on the high seas or within national waters of coastal developing States. In 2003 the UN General Assembly established an Assistance Fund to assist developing States in the implementation of UNFSA.<sup>80</sup>

### 1.3 The FAO Port State Agreement

The FAO Conference adopted in 2009 the Port State Agreement, which enters into force once 25 ratifications have been received by the depositary, FAO.<sup>81</sup>

The Agreement establishes a step by step process for the port State to allow or deny the entry to and the use of its port. Advance notification must be required before access to port is granted, sufficiently in advance to allow the port State time for examination. Based on the notification as well as other information it may require to determine whether the vessel has engaged in IUU fishing, the port State shall decide whether to authorise

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<sup>79</sup> Article 3 of UNFSA.

<sup>80</sup> FAO administers the Fund and acts as the implementing office for the Fund in collaboration with the UN. Financial support may be sought for: i) facilitating participation in meetings of RFMOs; ii) assisting with travel costs in relevant meetings of global organisations dealing with high seas fisheries; iii) supporting ongoing and future negotiations to establish new RFMOs, to renegotiate founding agreements and to strengthen existing RFMOs; iv) building capacity for effective exercise of flag State duties, MCS, data collection and scientific research; v) facilitating exchange of information and experience on the implementation of UNFSA; vi) assisting with human resources development, technical training and technical assistance in relation to conservation and management of the relevant stocks and development of fisheries for such stocks, consistent with the duty to ensure the proper conservation and management of such stocks; and vii) assisting in meeting costs involved in proceedings for the settlement of disputes.

<sup>81</sup> As of 31 January 2015 there are eleven parties. Six of them are IOTC members (The European Union, Mozambique, Myanmar, Oman, Seychelles and Sri Lanka) are parties to the Port State Agreement.

or to deny entry into its port. A port State shall, however, deny access if it has sufficient proof that a vessel has engaged in IUU fishing, and in particular if the vessel is on an IUU vessel list established by an RFMO.

Furthermore, a vessel that has entered a port shall not be permitted to use that port if the vessel does not have a fishing authorisation required by the flag State or a coastal State, or if there is clear evidence that the fish on board was taken in contravention with coastal State measures. Use of port shall also be denied if the flag State, on request, fails to confirm that the fish onboard was taken in accordance with requirements of an RFMO or the port State has reasonable grounds to believe that IUU fishing had taken place, unless the vessel can establish otherwise.

The Agreement lists a series of duties on port States in carrying out inspections, including qualification of inspectors, identity cards, examination, cooperation and communication and an obligation to minimise interference and inconvenience. The port State is required to include into a report of the inspection the result indicators and to transmit the results to the flag State.

The Port State Agreement recognises the assistance requirements for developing countries related to its implementation. In particular assistance shall be provided for enhancing their legal basis and capacity, their participation in international organisations as well as technical assistance to strengthen and coordinate the development of port State measures.<sup>82</sup>

#### **1.4 The FAO Compliance Agreement**

The FAO Compliance Agreement was finalised prior to UNFSA, in 1993, and some of the provisions overlap. It entered into force in 2003 and forms an integral part of the Code. It applies to “international conservation and management measures” adopted and applied in accordance with the LOS Convention. It is thus not limited to species covered by UNFSA. The focus of the Compliance Agreement is the authorisation of fishing on the high seas and the development of the concept of flag State responsibility and of mechanisms to ensure the free flow of information on high seas fishing operations. Article III (3) of the Agreement prohibits a party from authorising a fishing vessel to fish on the high seas unless it is satisfied, taking into account the links that exist between it and the vessel concerned, that it is able to exercise effectively its responsibilities under the Agreement in respect of that vessel. It is thus up to flag States to ensure that the concept of flag State responsibility is given meaningful substance and to exercise effective flag State jurisdiction. Thus, the principal obligation will be first, to exercise its responsibility over vessels flying its flag, and second to establish a record of fishing vessels and to provide the information required. The idea is that availability of information regarding vessels authorized to fish on the high seas, will lead to an increased ability to identify those vessels fishing without authorization. This information is also important in the light of the increased powers that States acquire under UNFSA.

#### **1.5 IOTC members formal relations to UNFSA and the FAO Compliance Agreement<sup>83</sup>**

The table below shows IOTC members that are parties to UNFSA and/or the Compliance Agreement.

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<sup>82</sup> An Informal Open-Ended Technical Meeting was held in November 2011 to develop terms of reference for the ad hoc working group referred to in paragraph 6 of article 21 of the Agreement. The meeting drafted terms of reference for an appropriate funding mechanism to assist developing State parties in implementing the Agreement. The terms of reference for the ad hoc working group were endorsed by COFI in July 2012, while the terms of reference for the funding mechanism will be formally adopted by the ad hoc working group itself.

<sup>83</sup> As at 25 January 2015 (asterisks indicate ratifications and accessions).

Member	UNFSA	FAO Compliance Agreement
Australia	*	*
Belize	*	*
China		
Comoros		
Eritrea		
European Union	*	*
France	*	<sup>84</sup>
Guinea	*	
India	*	
Indonesia		
Iran, Islamic Republic of	*	
Japan	*	*
Kenya	*	*
Korea, Republic of	*	*
Madagascar		*
Malaysia		
Maldives	*	
Mauritius	*	*
Mozambique	*	*
Oman, Sultanate of	*	*
Pakistan		
Philippines	*	
Seychelles	*	*
Sierra Leone		
Somalia		
Sri Lanka	*	*
Sudan		
Tanzania; United Republic of		*
Thailand		
United Kingdom	*	<sup>85</sup>
Vanuatu		
Yemen		

As can be seen from this table, 18 IOTC members are bound by UNFSA and 15 by the FAO Compliance Agreement, while 14 are parties to both instruments. 13 IOTC members are not parties to any of these instruments.

## 1.5 The Code

The Code, which was adopted in 1995, provides a framework for national and international efforts to ensure sustainable exploration of aquatic living resources in harmony with the environment. The Code, which is not legally binding, contains principles and standards applicable to the conservation, management and

<sup>84</sup> As a member State of the European Union

<sup>85</sup> As a member State of the European Union.



development of all fisheries. It covers capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal management. The principles of the Code are set out in article 6, subsequently dealt with in more details later in the Code. In relation to RFMOs, in particular, articles 7 and 8 give adequate and important guidance. Article 7 includes provisions on management objectives, management framework and procedures, data gathering and management advice, application of the precautionary approach, the establishment of management measures as well as their implementation. Article 8 deals with fishing operations and contains provisions on the duties of the flag State and the port State. The overall objective is to promote a framework for sustainable development, foster protection of the aquatic environment and the maintenance of biodiversity while making a contribution to the safety of fishing operations. It should be noted that FAO has supplemented many of these principles by developing specific technical guidelines.

**a) IPOA-IUU**

One of the main issues on the international fisheries agenda for the last decade has been to combat IUU fishing, which has been identified as a major threat to fisheries conservation and marine biodiversity. It can lead to collapse of a fishery, which in turn may cause adverse consequences for the livelihood of people depending on them. It occurs in all fisheries, whether they are conducted within areas under national jurisdiction or on the high seas. A number of initiatives have been taken by global organisations, regional bodies and States to counteract such activities. In this context in particular the IPOA-IUU is important. The action plan is voluntary instrument - a comprehensive toolbox that contains several suggested measures for combating IUU fishing, including those to be used by flag States, coastal States, port States and RFMOs. The IPOA-IUU calls on States, through RFMOs, to take various actions, such as developing boarding and inspection schemes, implementing vessel monitoring systems (VMS) and observer programmes, identifying vessels that are engaged in IUU fishing, regulating transshipment operations as well as adopting port inspection schemes, certification and/or trade documentation schemes and other marked-related measures.

**b) IPOA-Seabirds**

There are concerns about incidental catch of seabirds in longline fisheries, occurring also in fisheries for tuna, swordfish and billfish. According to the action plan, States should, either individually or through appropriate RFMOs, conduct assessments of these fisheries to determine if a problem exists with respect to incidental catch of seabirds. If a problem is identified, initiatives should include the adoption of mitigation measures, plans for research and development, awareness campaigns and data collection programmes. The IPOA-Seabirds also contains an annex describing some optional technical and operational measures for reducing the incidental catch of seabirds in longline fisheries.

**c) IPOA-Sharks**

As sharks often have long recovery time if over-fished, concerns have also been expressed in various fora about the rise in shark catches. In addition the knowledge about shark populations and fishing practices is insufficient due to lack of data. In order to address these concerns FAO adopted in 1999 the IPOA-Sharks calling on States to take a number of actions to ensure the conservation and management of sharks and their long-term sustainable use, including developing national plans which should contain shark stocks assessments based on consistent data collection. Such data should be made available to, among others, relevant RFMOs. It is recognised that sharing such information is particularly important in relation to straddling, highly migratory and discrete high seas shark stocks.

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**d) IPOA-Capacity**

Open access regimes often lead to overcapacity, where individual vessels race to catch as much fish as possible, as quickly as possible. Other causes of over-fishing are uncertain scientific information, and risk-prone decisions in the face of pressure to postpone economic and social hardships. While environmental factors have also adversely affected some fish stocks, excessive levels of fishing capacity are believed to be the primary cause of fisheries declines. Moreover, fishing overcapacity is also known to have contributed to the problem of IUU fishing, particularly in cases where excess capacity has been exported through re-flagging to States, which do not comply with their obligations. Overcapacity is addressed in many ways, by input regulations fishing seasons/days, area closures, gears and vessel-related restrictions, as well as by output regulations such as right-based measures. Coordinated efforts are, however, essential. FAO adopted IPOA-Capacity in 1999, with the objective for States and RFMOs to achieve an efficient, equitable and transparent management of fishery capacity. IPOA-Capacity specifies several actions to be taken for assessing and monitoring capacity, preparing and implementing national plans, international considerations and immediate actions for major international fisheries requiring urgent measures.

**e) Guidelines on Bycatch and Discards**

Concerns about bycatch and the practice of discarding have been expressed in many fora, including on repeated occasions at the UN General Assembly, urging States and others to reduce or eliminate bycatch, catch by lost and abandoned gear, fish discards and post-harvest losses, including juvenile fish. At COFI in 2009, major concerns were expressed related to these issues, and FAO took on the task of developing guidelines to assist in this regard. The guidelines adopted in 2010 contains a series of suggested actions in order to minimize the capture and mortality of species and sizes which are not going to be used, measures that contribute towards more effective management of bycatch and reduction of discards as well as how to improve reporting and the accounting of all components of the catch of which bycatch and discards are subsets.

**f) Guidelines for Flag State Performance**

To improve flag State performance has been a topic on the international agenda for several years, and an FAO technical consultation concluded in 2013 its work on guidelines for flag State performance and possible actions to be taken against fishing vessels not meeting those standards. The guidelines include the scope of application, cooperation between flag States and coastal States, procedures for carrying out assessments, encouraging compliance and deterring non-compliance, assistance to developing countries with a view to capacity development and the role of FAO. The guidelines were endorsed by COFI in June 2014.

**g) Guidelines for Securing Sustainable Small-scale Fisheries**

Following a decision by COFI in 2011, FAO developed international guidelines on small-scale fisheries, drawing on relevant existing instrument and complementing the Code, and involved governments, regional organisations, non-governmental organisations, and small-scale fishers, fish workers and their communities. The guidelines were adopted by COFI in June 2014. These guidelines contain five main thematic areas in relation to responsible fisheries and sustainable development: (i) governance of tenure in small-scale fisheries and resource management, (ii) social development employment and decent work, (iii) value chains, postharvest and trade, (iv) gender equality, and (v) disaster risks and climate change. Areas for ensuring an enabling environment and supporting implementation include: (i) policy coherence, institutional coordination and collaboration, (ii) information, research and communication, capacity development, and (iv) implementation support and monitoring.

## 1.6 CITES

The objective of CITES<sup>86</sup> is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Species covered by CITES are listed in three different appendices, according to the degree of protection required. Appendix I includes species threatened with extinction, Appendix II species for which trade must be controlled in order to avoid utilization incompatible with their survival, and Appendix III contains species that are protected in at least one country, which has asked other CITES parties for assistance in controlling the trade. In recent years more and more aquatic species have been listed, and are thereby being marketed under trade restrictions. Currently there are 15 fish species on Appendix I and 71 on Appendix II.

CITES and FAO entered in 2006 into a formal relationship in a Memorandum of Understanding, whereby FAO and CITES will review and consult on the scientific, legal, and technical evaluation of commercially exploited aquatic species listed or proposed for listing in the CITES Appendices.

## 1.7 ACAP

ACAP entered into force in 2004 and there are currently 13 parties.<sup>87</sup> Its objective is to achieve and maintain a favourable conservation status for albatrosses and petrels. In order to reach this goal, the parties shall take a series of actions, including the development and implementation of measures to prevent, remove, minimise or mitigate the adverse effects of activities that may influence the conservation status of albatrosses and petrels. Such activities may include improving selectivity of fishing gear and specifically incidental mortality as a result of commercial fishing activities.<sup>88</sup>

## 1.9 CBD

CBD was developed as one of the follow-up initiatives to the UN Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992. Currently there are 193 parties to the Convention, including Myanmar.<sup>89</sup> Its objective is the conservation of biological diversity, the sustainable use of its components, the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies. In order to achieve these goals, CBD contains a series of provisions, including focussing on cooperation, general measures for conservation and sustainable use, identification and monitoring, sustainable use of components of biological diversity, impact assessment and minimising adverse impacts, access to genetic resources, access to transfer of technology, exchange of information, technical and scientific cooperation, handling of biotechnology and distribution of its benefits as well as research and training.

The Conference of Parties (COP) is the governing body of CBD.

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<sup>86</sup> Myanmar became party to the convention on 11 September 1997.

<sup>87</sup> Myanmar is not a party of ACAP.

<sup>88</sup> Cf. Article III (1)(c) and section six of the preamble of the Agreement.

<sup>89</sup> Myanmar became member of CBD on 25 November 1994.

## 2. Global consultations/cooperation - fora

In essence there are two global fora where fisheries and fisheries related issues are discussed on a regular basis and guidance given to States and RFMOs, namely the UN General Assembly and FAO. In addition fisheries management has of course been on the agendas of the world summits on sustainable development in Rio de Janeiro in 1992, in Johannesburg in 2002 and now recently Rio+20. Other global fora which partly deal with fisheries related activities include the Conference of the Parties to CITES, the International Whaling Commission (IWC), the meeting of Parties to ACAP and the Conference of Parties to CBD.

### 2.1 United Nations

#### a) Sustainable Fisheries Resolutions<sup>90</sup>

The UN Secretary-General has since 1994 produced reports on fisheries issues, most of them based on inputs from States and RFMOs through questionnaires. These reports have in turn created the basis for various resolutions adopted by the UN General Assembly.

In the period 1994 – 2002 topics described in these reports included large-scale drift-net fishing, unauthorised fishing in zones of national jurisdiction and on the high seas and fisheries by-catch and discards.

Since 2003 the UN General Assembly has annually adopted a specific resolution on fisheries, the so-called Sustainable Fisheries Resolution addressing numerous issues, including the implementation of UNFSA, IUU fishing, monitoring, control, and surveillance and enforcement, fishing overcapacity, large-scale pelagic drift-net fishing, fisheries by-catch and discards, sub-regional and regional cooperation, responsible fisheries in the marine ecosystem, protection of VMEs from bottom fisheries, and capacity-building. Negotiations of the Sustainable Fisheries Resolution, as well as the Ocean and Law of the Sea Resolution, both of which are adopted by the General Assembly in December each year, take place in informal sessions in New York from September to November.

#### b) Informal Consultative Process (ICP)

Since 2000, the Open-ended Informal Consultative Processes on Oceans and the Law of the Sea have been convened annually at the UN Headquarter in New York. The formats of the meetings have been to work through plenary sessions and discussion panels. ICP acts as facilitator for the work of the UN General Assembly in this field. The outcomes of the consultations have been fed into the negotiations of the Sustainable Fisheries Resolutions and the Oceans and the Law of the Sea Resolutions, respectively, and thus the ICP plays a part in setting the agenda for global initiatives.

Fisheries related topics that have been addressed by the ICP include the following:

- i.. Marine science and the development and transfer of marine technology, including capacity-building in this regard (2001);
- ii. Protection and preservation of the marine environment (2002);

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<sup>90</sup> The full title of the resolution is: Resolution on sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments.



- iii. Capacity-building, regional cooperation and coordination and integrated ocean management (2002);
- iv. Protection of vulnerable marine ecosystems (2003);
- v. New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction (2004);
- vi. Fisheries and their contribution to sustainable development (2005);
- vii. Ecosystem approaches and oceans (2006);
- viii. Marine genetic resources (2007);
- ix. Maritime security and safety (2008);
- x. Capacity-building in ocean affairs and the law of the sea, including marine science (2010);
- xi. Contributing to the assessment, in context of the United Nations Conference on Sustainable Development, of progress to date and remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges (2011); and
- xii. Role of seafood in global food security (2014).

**c) Informal Consultations of States Parties to UNFSA (ICSP)**

UNFSA entered into force in 2001. Since then, States Parties to the Agreement have met regularly at the UN Headquarters in New York. The consultations have focussed on implementation of UNFSA at the national, sub-regional, regional and global levels and the promotion of further ratification of and accession to the Agreement. The consultations drafted terms of reference for the Assistance Fund established under Part VII of the Agreement, and the consultations were the forum used to organise and prepare for the Review Conference to be convened four years after UNFSA entered into force, see point d) below.

In essence ICSP has devoted most of its time to a dialogue to promote a wider participation in UNFSA, including focussing on capacity-building, the relationship between UNFSA and the LOS Convention and compatibility between conservation and management measures. The next ICSP will be held in March 2015.

**d) Review Conference of UNFSA**

The UN Secretary-General was pursuant to article 36 of UNFSA mandated to convene a Review Conference four years after entry into force of the agreement. The Review Conference was held in New York in 2006, and a second session was convened in 2010. The purpose was to assess the effectiveness of UNFSA in securing the conservation and management of straddling fish stocks and highly migratory fish stocks by reviewing and assessing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in conservation and management of those stocks.<sup>91</sup>

The outcome of the Review Conference is set out in annexes to the reports of the Conference.<sup>92</sup> The outcome includes review and assessments as well as proposed means of strengthening the implementation of UNFSA. Among the recommendations of the Review Conference was to apply the relevant provisions of the

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<sup>91</sup> UNFSA article 36, paragraphs 1 and 2.

<sup>92</sup> See Report of the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (A/CONF.210/2005/15) and the Report of the resumed Review Conference (A/CONF.210/2010/7).



Agreement, *mutatis mutandis*, also to discrete high seas fish stocks. It was agreed to continue informal consultations and to keep the agreement under review through the resumption of the Review Conference at a date no earlier than 2015. It has now been agreed to meet in 2016.

#### e) **Working Group on Marine Biological Diversity Beyond Areas of National Jurisdiction**

A working group established by the UN General assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction has met for eight sessions, in 2006, 2008, 2010, 2011, 2012, 2013 and two times in 2014.<sup>93</sup> Issues examined include the environmental impacts of anthropogenic activities, coordination and cooperation among States as well as relevant intergovernmental organisations and bodies, the role of area-based management tools, genetic resources and the question whether there is a governance or regulatory gap.

There is still much to be done concerning marine biological diversity in the high seas, which may include implementation and enforcement of existing instruments, cooperation and coordination at all levels and across sectors, capacity-building for developing countries, development of environmental impact assessment tools, development of area-management tools, practical measures to address the conservation and sustainable use of marine genetic resources, including benefit sharing, as well as continued and enhanced marine scientific research.

At Rio +20 it was agreed, building on the work of this group and before the end of the 69<sup>th</sup> session of the UN General Assembly, to address, on an urgent basis the issue of conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction including by taking a decision on the development of an international instrument under the LOS Convention. In this regard, two workshops were convened in 2013 at the UN, one on marine genetic resources and another on conservation and management tools, including area-based management and environmental impact assessments.

At the working group meeting in August 2013, it was agreed to initiate a process within the working group to make recommendations to the General Assembly on the scope, parameters and feasibility of an international instrument under the LOS Convention. This was confirmed in the Oceans and Law of the Sea Resolution adopted by the General Assembly in December 2013. The working group shall hold at least three meetings for this purpose, the group met two times in 2014 and the next meeting will be held 2015.

## **2.2 FAO - COFI**

COFI constitutes an inter-governmental forum where major international fisheries and aquaculture problems and issues are examined. Its recommendations are addressed to governments, regional fisheries bodies, the fishing industry and non-governmental organisations. Many of the recommendations are on a worldwide basis, and as indicated above COFI is also used as a forum in which global, binding agreements and voluntary instruments are negotiated.

COFI's main functions are to review FAO's relevant work programmes, including their implementation, and to conduct general reviews of fishery and aquaculture problems of an international character and to address such problems by recommended actions. FAO request its members and RFMOs to contribute to these reviews

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<sup>93</sup> Cf. reports A/61/65, A/63/79, A/65/68, A/66/119, A/67/95 and A/68/399.

by returning questionnaires, which are widely distributed prior to COFI sessions. The questionnaires mainly focus on implementation of the Code and the four IPOAs.

Sessions of COFI are held biennially, the last in June 2014, while the next will be in 2016.

COFI has established two sub-committees, one on fish trade and another on aquaculture. These subsidiary bodies meet in the intersessional period.

FAO conducts a series of activities throughout the year relevant for capture fishing, both internally and through seminars, workshops etc. From January 2011 to January 2015 some meetings took place, which may have a direct or indirect impact on conservation and management of aquatic resources in a global perspective, for instance the following:

- i. Technical Consultation on Flag State Performance;
- ii. Stakeholder Consultation Meeting on the Programme in Support of the FAO Strategy for Fisheries and Aquaculture;
- iii. Informal open-ended technical meeting to review draft terms of reference for the ad hoc working group referred to in paragraph 6 of Article 21 of the 2009 Agreement on Port State Measures;
- iv. FAO Workshop for the Development of a Global Database for Vulnerable Marine Ecosystem (VMEs);
- v. Workshop on International Guidelines for Securing Sustainable Small-Scale Fisheries; and
- vi. Technical Consultation on International Guidelines for Securing Sustainable Small-Scale Fisheries.

### **2.3 Conference of the Parties to CITES (COP-CITES)**

COP-CITES is held every third year, the 16th was held in 2013.<sup>94</sup> Among the issues addressed by CITES with relevance to fisheries have been guidelines for compliance with the Convention, national laws, enforcement matters, national reports, introduction from the sea and trade in Annex 1-species.

Concerning the topic of introduction from the sea, CITES and FAO entered in 2006 into a formal relationship in a Memorandum of Understanding, whereby FAO and CITES review and consult together on scientific, legal, and technical evaluation of commercially exploited aquatic species listed or proposed for listing in the CITES Appendices.

Several marine species have been under discussion, among them sharks, sturgeons and paddlefish, toothfish and sea cucumbers.

The next meeting will be convened in 2016.

### **2.4 COP-CBD**

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<sup>94</sup> The meeting was held in Thailand, 3-15 March 2013.

COP is the governing body of the CBD. COP's key functions are to keep under review the implementation of the Convention and to steer its development. Other functions include adoption of the budget, the consideration of national reports, the adoption of protocols or annexes and the development of guidance to the financial mechanism.

Among the topics recently addressed are a review of progress made in the implementation of the elaborated programme of work on marine and coastal biological diversity, identification of ecologically or biologically significant areas (EBSAs) and scientific and technical aspects relevant to environmental impact assessment in marine areas, as well as impacts of unsustainable fishing such as destructive fishing practices, overfishing and IUU fishing on marine and coastal biodiversity.

## 2.5 International Union for the Conservation of Nature (IUCN)

IUCN was established in 1948 as the first global environmental organisation and is recognised as a professional, global conservation network consisting of States and organizations. The goal of IUCN is to find pragmatic solutions to pressing environmental and development challenges, in particular in conservation of the integrity and diversity of nature, by focussing on species, ecosystems and biodiversity. IUCN supports scientific research, manages field projects and brings together governments, non-governmental organisations, UN agencies, companies and local communities in order to develop and implement policy and best practices.<sup>95</sup>

Consequently IUCN also addresses several fisheries related issues, over the last years focus has in particular been on marine protected areas on the high seas, bottom trawling and listing of threatened species. The listing of threatened species is based on a set of criteria to evaluate the extinction risk of species, relevant to all species and regions of the world.<sup>96</sup> The list is categorised in the following way: Critical endangered, endangered, vulnerable, near threatened, least concern and data deficient.

In general IUCN focuses on a wide range of topics on governance, biodiversity conservation, ecosystems, climate change, economy, markets and finance, law<sup>7</sup> policy and ethics as well as education and communication. Among the fisheries related issues discussed were conservation of turtles, sharks and whales, as well as RFMO and flag State responsibilities regarding IUU fishing.

## 2.6 Rio +20

About 150 States met in Rio in June 2012 for the World Summit on Sustainable Development (Rio +20). The declaration "The Future We Want" contains a special chapter on oceans and seas that recognises the multiple benefits of oceans (food, livelihood, biodiversity, global life support systems, blue economy) and the threats oceans and their living resources face, including overfishing, ocean acidification, habitat loss and pollution.<sup>97</sup> The document reaffirms some of the obligations from the Johannesburg Declaration and includes a wide range of additional commitments concerning sustainable development of oceans, coastal areas and seas through, among other things, combating IUU fishing, marine environmental protection, sustainable use and conservation of marine living resources and strengthening international cooperation and coordination.

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<sup>95</sup>The total number of members in October 2014 is 1226, among them 88 States.

<sup>96</sup> About 1 300 fish species are on the list, both marine species and freshwater fish.

<sup>97</sup> See paragraphs 158-177 of the Declaration.

The document furthermore urges ratification of UNFSA and the FAO Port State Agreement, and as mentioned above it was agreed to take a decision before the end of 2014 on whether an international instrument shall be developed under the LOS Convention to address the issue of conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction, see point 2.1e above.

## **2.7 Marine Stewardship Council (MSC)**

The Marine Stewardship Council (MSC) is an independent non-profit organization that has established a global environmental standard for sustainable and well-managed fisheries. The MSC programme is voluntary and fisheries that are assessed and meet the standard can use the MSC blue eco-label. The MSC mission is to promote 'the best environmental choice in seafood'. The MSC seeks to harness consumer preference for products from sustainable fisheries by use of its eco-label. When fish is bought that has the blue MSC eco-label, it should indicate that this fishery operates in an environmentally responsible way and does not contribute to the global environmental problem of overfishing. There are also other eco-labelling organizations.

## **2.8 International Monitoring, Control and Surveillance network for Fisheries-related Activities (IMC Network)**

The IMCS Network is a non-profit and informal network of members, not bound by treaty, established to facilitate bilateral and multilateral cooperation to combat IUU fishing. Currently 49 countries are members of the network. The objective of the network is to improve the efficiency and effectiveness of MCS through cooperation, coordination, collection and exchange of information among the organisations or institutions responsible for fisheries and fisheries-related MCS activities.

The IMCS Network has convened four global fisheries training workshops (in Malaysia, Norway, Mozambique and Costa Rica), and a fifth one will be held in New Zealand in 2016.

## **2.9 The United Nations Office on Drugs and Crime (UNODC)**

The UNODC is the guardian of the UN Convention against Transnational Organized Crime and the UN Convention against Corruption. UNODC is mandated to help member States in the fight against transnational organized crime and corruption. Fisheries crime is often a transnational organized crime and should be dealt with accordingly. In the UNODC study on transnational organized crime in the fishing industry, one finding was the following: "The fact that marine living resources are becoming more valuable due to over-exploitation means that the involvement of transnational organized crime syndicates in marine living resource crimes is likely to intensify."

## **2.10 INTERPOL**

INTERPOL's environmental crime program has been mandated by the General Assembly of INTERPOL since 2010 to work against fisheries crime. In February 2012, the first steps were taken by establishing the INTERPOL ad hoc Fisheries Crime Working Group. This group will create a strategic plan for INTERPOL's role in capacity-building, information exchange and operational support in fisheries crime cases. The working group is one component of INTERPOL's newly established "Project Scale" which is an initiative to detect, suppress and combat fisheries crime.

## **2.14 Other initiatives**

**a) UN-Oceans**

UN-Oceans was set up in 2003 as an inter-agency coordination mechanism on oceans and coastal issues within the UN system and is comprised of the relevant specialised agencies, programmes and other entities of the UN system and secretariats of the relevant international conventions, including the International Seabed Authority and CBD.

**b) Global Environment Facility (GEF)**

GEF is a financial organization providing grants for environmental programs. It has established a program concerning areas beyond national jurisdiction, focussing on sustainable management of tuna fisheries and biodiversity conservation, sustainable fisheries management and conservation of deep-sea living resources and ecosystems, ocean partnerships for sustainable fisheries and biodiversity conservation – models for innovation and reform as well as strengthening global capacity for effective management.

**c) Global Partnership for Oceans (GPO)**

GPO was announced by the World Bank with the goal of sustainably enhancing the economic, social and ecological performance of ocean's ecosystems and living resources, with improved benefits captured by coastal and island developing countries and global benefits accruing as a whole. GPO is a coalition of governments, international organisations, non-governmental organizations and members of the private sector

**d) Global Ocean Forum**

Global Ocean Forum was formalised at the World Summit on Sustainable Development in 2002, and is composed of experts from governments, intergovernmental organisations and non-governmental organisations, pursuing the common goal of encouraging the sustainable development of oceans, coasts and islands.

**e) The Kobe process**

In 2007 members of the five tuna-RFMOs agreed in Kobe to a Course of Action that emphasizes actions required to improve performance by those RFMOs, regarding particularly: (i) management efficiency; (ii) stock-rebuilding; (iii) the use of the best scientific advice; (iv) the adjustment of fishing capacity to biological productivity; (v) strengthening of MCS; (vi) improvement of compliance; and (vi) performance assessment criteria.

A meeting in 2009 in San Sebastian (Kobe II) focused on implementation of the Course of Action and recommended a series of actions: (i) the establishment of a global register of tuna vessels; (ii) robust compliance review mechanisms; (iii) better articulation of risk and uncertainty in scientific advice; (iv) improved management of sharks; (v) adoption of Unique Vessel Identifiers; and (vi) harmonization of IUU vessel lists.

At a meeting in La Jolla in 2011 (Kobe III) emphasis was put on the need for practical action regarding: (i) information sharing across RFMOs; (ii) guidelines for decision-making; (iii) harmonization of IUU vessels lists; (iv) standardized report cards to assess members' compliance; (v) the FAO Port States Agreement; (vi) catch documentation schemes; and (vii) a global list of authorized Active Tuna Vessels (ATVs).

## 2.11 Other RFMOs

Some RFMOs have been established after many of these new instruments were agreed, notably the South East Atlantic Fisheries Organisation (SEAFO), the South Indian Ocean Fisheries Agreement (SIOFA), the South Pacific Regional Fisheries Management Organization (SPRFMO) and the Western Central Pacific Fisheries Commission (WCPFC), while other conventions have been amended or replaced to take into account these new developments. The Antigua Convention, which was concluded in 2003, is intended to replace the Inter-American Tropical Tuna Convention, which dates back to 1949. Building on principles set out in many of the abovementioned global instruments, the conventions of the Northwest Atlantic Fisheries Organization (NAFO) and the North East Atlantic Fisheries Commission (NEAFC) have also been modernised.<sup>98</sup> As the WCPFC Convention and the Antigua Convention relate to tuna and tuna-like species and these instruments are the most relevant in relation to IOTC. Although GFCM’s mandate is related to non-tuna species in the Mediterranean and the Black Sea, the amended GFCM Agreement would also be relevant as it is, like the IOTC, a so-called FAO Article XIV body.

### 2.11.1 The Antigua Convention

The initial idea was aimed at amending the IAATC Convention from 1949 in order to bring it in harmony with the principles of international law as reflected in LOS Convention, and the provisions of other international instruments such as UNFSA, the Compliance Agreement and the Code. However, the gap was so great between these instruments and the 1949 Convention that very little could be preserved from the original text.<sup>99</sup> However, the institutional continuity of the IATTC is maintained, but the new instrument has filled a number of gaps and uncertainties. The Commission has been institutional strengthened with the establishment of a compliance committee and a scientific advisory body. The functions of the Commission have been updated and expanded to enable it to perform its tasks and adopt appropriate conservation and management measures. These tasks now cover a broad range of areas, such as scientific research, data collection, application of the precautionary approach, ecosystem considerations, fishing capacity, allocation and new entrants. Rights and obligations concerning implementation, compliance and enforcement have been specified, as well as duties as a flag State. Furthermore, decisions have to be adopted by consensus and provisions on the settlement of disputes have been included. Finally the Antigua Convention enables a fishing entity to participate in the work of the Commission.

### 2.11.2 WCPFC

The WCPFC Convention entered into force in 2004. The purpose of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the LOS Convention and UNFSA. The Convention generally reflects the provisions of UNFSA while, at the same time takes into account the special political, geographical and socio-economic characteristics of the region. The Convention is extensive, and its provisions spell out in details a number of actions to address principles of sustainable use, long-term conservation, application of the precautionary approach, as well as effective monitoring, control and surveillance. The Convention recognises the special requirements of developing States, includes cooperation mechanisms with

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<sup>98</sup> The amendments of these instruments have not yet entered into force, but NEAFC has agreed (“the London declaration”) to apply the “new Convention” provisionally until the ratification processes have been concluded.

<sup>99</sup> NAFO experienced similar challenges concerning the Convention dating back to 1978. NAFO chose, however, to amend its Convention, but in fact rewriting it completely, only keeping provisions on denunciation and registration unchanged.



other regional fisheries bodies and also gives the possibility for fishing entities to participate in the work of the WCPFC.

### 2.11.3 GFCM

Like IOTC, GFCM is a regional fisheries body established under Article XIV of the FAO constitution. The GFCM Agreement dates back to 1949, but has been amended on three occasions, the latest one in 1997. Following recommendations by a Performance Review Panel in 2011, work has been undertaken within GFCM and a series of amendments was endorsed by its Commission in May last year, which has been endorsed by the FAO Committee on Constitutional and Legal Matters in October and finally approved by the FAO Council at its 150<sup>th</sup> Session in November.

The GFCM area of competence comprises the Mediterranean and the Black Sea and its current objective and responsibilities is to promote the development, conservation, rational management and best utilization of living marine resources, as well as the sustainable development of aquaculture in the region.

Inspiration to the newly amended Agreement is in essence found in international instruments developed over the last twenty years, in particular UNFSA, the Code and its action plans as well as the legal frameworks of other RFMOs. Several new and modern principles have been incorporated into the preamble, a provision (new) on the use of terms has been included and the objective clause has been modified. Furthermore a new clause on general principles has been incorporated and the functions of the Commission have been revised, specified and broadened. Other important amendments are related to decision-making and dispute settlement, obligation relating to the implementation of decisions by contracting parties (new), observers (new), recognition of special requirements of developing states contracting parties (new) and non-contracting parties (new).

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**APPENDIX V**

**REVISED TERMS OF REFERENCE FOR THE SCIENCE EXPERT AND THE COST-BENEFITS STUDY**

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**REVISED: Terms of Reference**

**IOTC Second Performance Review  
Science Expert**

**Last updated: 05 February 2015**

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**Background**

The IOTC is an intergovernmental organization established under article XIV of the FAO constitution. The IOTC agreement was concluded in 1993 and entered in force in 1996. The IOTC is mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent seas with primary objective the conservation and optimum utilization of the stocks for long-term sustainability.

The main functions of the IOTC are to keep under review the conditions and trends of the stocks and to gather, analyse and disseminate scientific information. In addition to this, the IOTC is also a repository for other data relevant to the conservation and management of the stocks and to fisheries based on the stocks covered by the Agreement. Finally, one of the main functions of the IOTC is to encourage, recommend, and coordinate research and development activities in respect of the stocks and fisheries covered by the Agreement, and such other activities as the Commission may decide appropriate. These may include activities connected with transfer of technology, training and enhancement, with the need to ensure the equitable participation of members of the Commission In particular those from developing countries.

**Aims and Objectives:**

The main task is to evaluate progress made on the recommendations arising from the first performance review. In addition it will focus on the effectiveness of the Commission to fulfil its mandate, in accordance to the ToR and criteria to conduct the second Performance Review of the IOTC, and notably to the criteria set forth below with regards to the delivery and management of the science process, and advice.

The overall objective is to:

1. Carry out an assessment of the IOTC science process as per its mandate. In doing the review, the strengths, weakness, opportunities and risks to the organisation should be evaluated, including the involvement of CPC in science and the implementation of Scientific Committee recommendations.
2. Assess the consistency between scientific advice and CCMs adopted.
3. Review the recommendations on science from the first performance review, notably through the tables/matrix prepared by the Secretariat.
4. Make recommendations on how to improve the IOTC Science including any changes to process.

**Scope:**

The work to be carried by expert shall be in accordance to the following criteria.

**CONSERVATION AND MANAGEMENT MEASURES**

***Status of living marine resources***

- Status of fish stocks under the purview of the IOTC in relation to maximum sustainable yield or other relevant biological standards.

- Status of species that belong to the same ecosystems as, or are associated with or dependent upon, the IOTC species (hereinafter “non-target species”).

#### ***Data collection and sharing***

- Extent to which the IOTC has agreed formats, specifications and timeframes for data submission, taking into account UNFSA Annex I.
- Extent to which IOTC members and Cooperating Non-Contracting Parties, individually or through the IOTC, collect and share complete and accurate fisheries data concerning target stocks and non-target species and other relevant data in a timely manner.
- Extent to which fishing data and fishing vessel data are gathered by the IOTC and shared among members and other RFMOs.
- Extent to which the IOTC is addressing any gaps in the collection and sharing of data as required.
- Extent to which the IOTC has set standards for the collection of socio-economic data from the fisheries, as specified in the IOTC Agreement; and extent to which this information is used to inform decisions from the Commission.
- Extent to which the IOTC has set security and confidentiality standards and rules for sharing of sensitive science and operational/compliance data.

#### ***Quality and provision of scientific advice***

- Extent to which the IOTC receives and/or produces the best scientific advice relevant to the fish stocks and other living marine resources under its purview, as well as to the effects of fishing on the marine environment.
  - Is there a need for external peer review of IOTC Stock Assessments?
  - Are the current ‘*Guidelines for the presentation of CPUE standardisations and stock assessment models*’, adopted by the IOTC Scientific Committee in December 2014, best practice and if not, how could they be further improved? Specifically:
    - Kobe Plots;
    - Kobe II Management Strategy Matrices;
    - Levels of uncertainty.
  - What is the level of scientific support provided by FAO to the IOTC?
  - Examine alternative approaches to the provision of scientific advice adopted in other tRFMOs. Specifically, whether the current IOTC practices of CPCs providing stock assessments, which are supplemented by consultants and the single stock assessment officer at the Secretariat is best practice or could be improved (including cost-benefits).
  - Examine the structure and functioning of the scientific subsidiary bodies of the Commission, with the intention of providing advice on the rationalisation of working parties.
  - Is the Commission receiving scientific advice for all IOTC species, including those impacted by IOTC fisheries.
- Extent to which science data that impacts compliance processes is shared, discussed and utilised.

### *Adoption of Conservation and Management Measures*

- Extent to which the IOTC has adopted Conservation and Management Measures for both target stocks and non-target species that ensures the long-term sustainability of the ecosystem as well as of such stocks and species and are based on the best scientific evidence available.
- Extent to which the IOTC has applied the modern fishing principles, as MSY or the precautionary approach as set forth in UNFSA Article 6 and the Code of Conduct for Responsible Fisheries Article 7.5, including the application of precautionary reference points and harvest control rules.
- Extent to which the IOTC has adopted and is implementing effective rebuilding plans for depleted or overfished stocks.
- Extent to which the IOTC has moved toward the adoption of Conservation and Management Measures for previously unregulated fisheries, including new and exploratory fisheries.
- Extent to which the IOTC has taken account the need to conserve marine biological diversity and minimise harmful impacts of fisheries on living marine resources and marine ecosystems.
- Extent to which the IOTC has adopted measures to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.

#### **Estimated time frame:**

It is estimated that a consultant would be required for 15 working days to carry out the work. This would include the following output: a draft report containing the result of analysis and recommendations based on the above criteria.

#### **Estimated budget and suggested timelines:**

<b>Component/Activity</b>	<b>Target</b>	<b>Total cost (US\$)</b>
Desk Review + 2 meeting days.	8 days	4800
Drafting the report, including recommendations	6 days	3600
Participate in one IOTC Performance Review Panel Meeting Secretariat (Seychelles, Tickets & DSA)		8000
Review Final draft Report	1 day	600
<b>Total estimated cost</b>	<b>15 days</b>	<b>17000</b>

#### **Submission Deadline:**

The Secretariat should receive the Expression of Interest by the 26<sup>th</sup> January 2015 and should include, a motivational letter, a CV, a work plan and an indicative timeframe.

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**REVISED: Terms of Reference**

**IOTC Second Performance Review  
Cost-Benefit Analysis**

**Last updated: 05 February 2015**

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**Background**

The Indian Ocean Tuna Commission (IOTC) was established in 1993 by agreement of its Members and in accordance with Article XIV of the Constitution of the Food and Agriculture Organization of the United Nations (FAO). The main functions of the IOTC are to keep under review the conditions and trends of the stocks and to gather, analyse and disseminate scientific information, catch and effort statistics and other data relevant to the conservation and management of the stocks and to fisheries based on the stocks covered by the Agreement, and to encourage, recommend, and coordinate research and development activities in respect of the stocks and fisheries covered by the Agreement, and such other activities as the Commission may decide appropriate, including activities connected with transfer of technology, training and enhancement, having due regard to the need to ensure the equitable participation of Members of the Commission in the fisheries and the special interests and needs of Members in the region that are developing countries.

The Commission annually adopts a budget covering its expenditures, which are financed from contributions paid by its Members in accordance with a scale of assessments adopted by the Commission.

The policies and activities of the Commission are implemented by its Secretary and appointed by the Director-General of the FAO with the approval of the Commission and other staff members appointed by the Secretary. The Secretary and staff of the Commission are appointed under the same terms and conditions as staff members of FAO.

In accordance with the agreement establishing the Commission the funds of IOTC are held in the general account of a trust fund administered by FAO in accordance with the FAO's Financial Regulations. The disbursement of funds by the FAO is authorized by the Commission's Secretary in accordance with the Commission's adopted budget. FAO provides certain services to IOTC including treasury and financial management, payroll, staff classification and recruitment, procurement and contracting for high value goods and services. FAO imposes a charge against IOTC funds to cover the costs of the services that FAO claims it provides.

FAO directly manages more than 2/3 of the IOTC budget (staff related costs and servicing costs), which includes staff entitlements and insurances that are integrated in the FAO global regime. There is no clarity on the way that this expenditure is managed and if all staff is benefiting from all FAO staff entitlements and insurances. Moreover, an audit to this expenditure has not been possible to be undertaken so far.

Recently, FAO also imposed new costs to the IOTC - Improved Cost Recovery Uplift (ICRU) - to recover, according to FAO, the costs of central services provided by Security and Information Technology relating to field personnel.

All extra-ordinary contributions to the IOTC secretariat to implement fisheries development, capacity building, science or any other actions related to the IOTC mandate are also subject to the above mentioned contribution costs, despite the non-involvement or support from FAO to the achievement of the above mentioned actions.

Annual and extraordinary contributions to IOTC are subjected to FAO financial requests that delay the payment and impose specific rules risking creating treasury problems to the secretariat.

***Scope and objectives:***

At its eleventh session in May of 2014, the IOTC Standing Committee on Administration and Finance (SCAF) recommended that an analysis of the cost and the benefits of IOTC's existence within and outside of FAO's structure

be undertaken to ascertain the viability of IOTC breaking from the UN administrative structure and mandate. This will be reviewed as part of the performance review of the organisation.

The individual or company selected will be responsible for:

- a) Determining the cost that IOTC would incur should it assume responsibility for separately for each of the specific functions and services currently provided to the Commission by FAO
- b) Determining the cost paid by IOTC members to cover servicing costs to the budget, ICRU, servicing costs and ICRU to extraordinary contributions and retention of entitlements and staff insurances. Also evaluate the delays generated by using FAO financial circuits.
- c) Determining the cost that IOTC would incur if the Commission would be required to undertake should it function as an independent entity outside of FAO's structure
- d) Identifying the benefits (advantages) or disadvantages to IOTC should it assume responsibility for each of the specific functions and services identified in (a) and (b) above and identify any support given by FAO to the IOTC.
- e) Where appropriate, proposing alternative methods of implementing the functions identified in a) and b) above along with comparative costs, benefits and disadvantages.
- f) Identifying any changes required in IOTC's Financial Regulations required should it decide to operate outside FAO's structure providing an analysis of the impact such changes might have on IOTC's Members.
- g) Determine whether there are any FAO administrative cost that not necessary for the functioning of IOTC due to its relationship with FAO.

### **C: Methodology and Approach**

In completing the identification of additional functions and responsibilities in b) above the study will take into consideration the administrative structure and business model of other regional fisheries bodies that operate independently of FAO including the:

Commission for the Conservation of Southern Blue Fin Tuna (CCSBT),  
Caribbean Regional Fisheries Mechanism (CRFM)  
Northwest Atlantic Fisheries Organization (NAFO)  
North Pacific Anadromous Fish Commission (NPAFC)  
Inter-American Tropical Tuna Commission (IATTC),  
International Commission for the Conservation of Atlantic Tunas (ICCAT)  
Sub-Regional Fisheries Commission (SRFC) and  
Western and Central Pacific Fisheries Commission (WCPFC)

In completing the identification of functions performed by FAO in a) above the study will take into consideration the business models of the other regional fisheries bodies operating within the FAO structure including the:

Regional Commission for Fisheries (RECOFI),  
Asia-Pacific Fishery Commission (APFIC),  
Fisheries Commission for the Eastern Central Atlantic (CECAF)  
Western Central Atlantic Fishery Commission (WECAFC) and  
General Fisheries Council for the Mediterranean (GFCM).

The study should also at other models of independent Entities affiliated with Organisations of the United Nations to see whether there are elements that could be borrowed to improve the efficiency of the IOTC. Organisations that should be looked at are listed in annex 1.

The study will provide cost and benefit/disadvantage information separately for each of the following major functions. All costs should be priced in US dollars. All costs priced in other currencies should be converted to US dollars using the United Nations Operational Rate of Exchange at 31 December 2014, which will be provided by IOTC. All costs related to additional personnel should be calculated using the 2014 FAO standard costs for the appropriate grade which will be provided by IOTC. All costs related to additional goods and services should be estimated based on delivery in Victoria, Seychelles:

1. Administrative and operational support services currently provided by FAO

Financial management: Treasury Management

Financial Reporting

Accounts Payable

Accounts Receivable

Payroll

Banking

Personnel management: Staff recruitment and selection

Post classification

Entitlement management

Information Technology and Communications:

Email services

Accounting system

Database systems

General Services

High value procurement and contracting

Other services

Legal services

Internal Audit

Consultant & external collaborator contracting

Travel arrangements

Other services identified during study

Additional Administrative functions required should IOTC function independently of FAO

External Audit

Annual Audit of Financial Statement

Personnel Appeals

Membership in International Organization Staff

Appeals Tribunal

Other

Other functions identified during study



2. Management and financing of employee benefits programmes:

- a. **Pension** – the staff of IOTC are members of the United Nations Joint Staff Pension Fund (UNJSPF) in light of their status as staff of FAO, which is a member of Pension Fund.

Since FAO will not itself be withdrawing from the provision of the UNJSPF Regulations related to settlement of proportionate share of assets on termination of membership will not apply.

Article 16

**TERMINATION OF MEMBERSHIP**

(a) Membership in the Fund may be terminated by decision of the General Assembly, upon the affirmative recommendation of the Board, following application for termination by a member organization or continued default by a member organization in its obligations under these Regulations.

(b) In the event of such termination, a proportionate share of the total assets of the Fund at the date of termination shall be paid to the former member organization for the exclusive benefit of its staff who were participants in the Fund on such date, pursuant to an arrangement mutually agreed between such organization and the Board.

(c) The amount of the proportionate share shall be determined by the Board after an actuarial valuation of the assets and liabilities of the Fund on the date of termination, provided that no part of the assets which are in excess of the liabilities shall be included in such share.

Should IOTC decide to function outside of FAO, it could apply for membership in UNJSPF. In order to be eligible form membership it would require that IOTC adhere to the UN common system. The specific wording in the UNJSPF regulations is as follows:

Article 3

**MEMBERSHIP**

(b) Membership in the Fund shall be open to the specialized agencies referred to in Article 57, paragraph 2, of the Charter of the United Nations and to any other international, intergovernmental organization, which participates in the common system of salaries, allowances and other conditions of service of the United Nations and the specialized agencies.

Based on discussions with the FAO CSH and, if appropriate, with the UNJSPF the study will provide information on the financial impact of withdrawal by IOTC from the pension along with information on the impact of the withdrawal on the current and retired IOTC staff members. In addition, the study will provide information on the impact should IOTC determine to apply for membership independently from FAO.

In addition, taking into consideration the information collected concerning the Fisheries Commissions that function independently from FAO and agencies associated with the UN system that are not members of the UNJSPF (e.g. CTBTO, OPCW, etc.) the study will provide financial information on the financial impact of providing alternative pension plans for IOTC staff.

- b. **Active staff health insurance** – the staff of IOTC is covered by a health insurance plan administered by FAO. Should IOTC decide to function independently from FAO it will be necessary to acquire a health insurance plan for its active staff. The study will provide information on the financial costs of separately acquiring health insurance providing similar benefits to those provided by FAO.
- c. **Retired staff health insurance** – the former staff of IOTC that have retired are covered by health insurance provided by FAO. The plan is administered through the FAO After Service Medical Coverage (ASMC) Scheme to which IOTC has contributed through an annual assessment based on a percentage rate applied to staff compensation. At 31 December 2013 the long-term liabilities of the Scheme were significantly underfunded. Based on discussions with the appropriate officials of FAO, the study will determine the current and long-term

liability of IOTC in regard to its former staff as of 31 December 2014 should IOTC decide to continue to provide coverage for former retirees through the FAO ASMC Scheme.

In addition, the study will evaluate alternative approaches to providing after-service health insurance coverage to IOTC's current and future retirees and provide information on the financial costs of providing alternative coverage along with any impact on former or future retirees.

- d. Terminal Payments Plan** – the staff of IOTC are covered for payment of repatriation grants and travel and accrued annual leave through the FAO Terminal Payments Plan. IOTC contributes to the plan based on a percentage rate staff assessment and FAO makes the actual payments in accordance with the FAO Staff Regulations and Rules. This arrangement enables IOTC to finance the cost of these benefits based on a stable annual charge rather than the impact of significant cash outflow in periods when individuals separate from service. At 31 December 2013 the FAO plan is currently partially unfunded. Based on discussions with the appropriate officials of FAO, the study will determine the current and long-term liability of IOTC in regard to its terminal payments as of 31 December 2014.

In addition, the study will provide information on the financial impact of providing alternative coverage through the creation of an IOTC reserve fund along with an analysis of the impact of cash outflow that would have been required had IOTC been required to make terminal payments from its operating budget. The study shall assume that benefit levels will remain at the rates provided in the FAO Staff Regulations and Rules.

- e. Disability and worker's compensation insurance** – IOTC staff are currently covered for injury due to work related accident by FAO. The study will provide information on the financial impact of providing alternative coverage through insurance coverage or creation of a self-insured reserve.
- f. Tax reimbursement** - IOTC staff with nationality of countries that charge taxes on remuneration received from IOTC are currently reimbursed by FAO, which obtains reimbursement from the country imposing the tax. This arrangement may not be available to IOTC if it functions separately from FAO. The study will analyze and report on the possible financial impact to IOTC of having to reimburse staff directly through IOTC's operating budget.

### 3. Remuneration Rates

As indicated in 2.a., should IOTC choose to function independently from FAO, participation in the UNJSPF requires that compensation and entitlements of IOTC staff continue to be based upon those of the common UN system. Should the Commission decide to operate independently of FAO, alternative compensation and entitlements could be provided to IOTC staff based on levels differing from those of the UN Common System.

The study shall review the compensation and entitlement plans of Fisheries Commissions operating independently from FAO and provide a comparative analysis of the plans of each such organization with those of IOTC to the extent each organization agrees to provide the information. For plans calculated in currencies other than US dollars, the compensation shall be converted to US dollars using the United National Operational Rate of Exchange for 31 December 2014.

### 4. Summary

The report will include a summary providing the financial impact, benefits and disadvantages of each of the elements described in C.1-3 above.

#### **A. Travel requirements for study**

The assignment will involve a mission to FAO Headquarters in Rome to discuss with FAO officials various elements of the assignment as defined above. In addition, the individual or company selected may be required to present the

findings at a meeting of the IOTC SCAF if invited by members. Reimbursement for travel will be based upon FAO Travel Reimbursement Rules.

### Qualifications

The consultant's level of expertise to carry out this assignment would be the following:

An expert with over 10 years' experience in the field of financial strategic planning, with organizational re-structuring expertise is required to research the Indian Ocean Tuna Commission's placement, as an Article 14 body, within the Food and Agriculture Organization of the United Nations (FAO). This includes in-depth analysis of other Regional Fisheries Management Organizations (RFMOs) such as ICCAT, CCSBT and WCPFC. While reviewing the organization's financial and staff regulations, options will also be developed for IOTC to remain within the FAO structure, in line with the structure of other RFMOs.

In addition to RFMO reviews, the current status of IPSAS and CCLM 88/3 – Committee on Constitutional and Legal Matters will be taken into consideration by the consultant when developing future options for IOTC.

### Estimated time frame:

It is estimated that a consultant would be required for 60 working days to carry out the work spread over a period of 6 months. This would include the following outputs:

A draft report containing the results of analysis based on the above criteria including recommendations and options.

### Estimated budget and suggested timelines:

Component/Activity	Target (days)	Total cost (US\$)
Analysis of administrative and operational support services currently provided by FAO	17	13,600
Analysis of Management and financing of employee benefits programmes.	22	17600
Review of Remunerations	6	4800
Report drafting	10	8000
Travel to FAO	5	6000
<b>Total estimated cost</b>	<b>60</b>	<b>50,000</b>

### Submission Deadline:

The Secretariat should receive the Expression of Interest by the 26<sup>th</sup> January 2015 and should include, a motivational letter, a CV, a work plan and an indicative timeframe.

**Annex 1: Independent Entities affiliated with Organizations of the United Nations**

UN Organization	Independent Entity	Description of Relationship
International Labour Organization (ILO)	International Social Security Association (ISSA)	<p>Delegated authority to recruit select personnel</p> <p>Staff issued ILO contracts</p> <p>Participate in UNJSPF and ILO Staff Health Insurance Fund</p> <p>Financial Statements and non-staff accounting by ISSA staff using separate accounting software</p> <p>High value procurement through ILO only if requested by ISSA</p> <p>Not charged for support costs</p>
World Intellectual Property Organization (WIPO)	International Union for the Protection of New Varieties of Plants (UPOV)	<p>WIPO DG titular Secretary-General of UPOV – actual operational responsibility held by Deputy-Secretary General of UPOV</p> <p>Accounting and Financial Statement preparation by WIPO</p> <p>Staff issued WIPO contracts</p> <p>Participate in UNJSPF and WIPO Health Insurance Plan (Van Bredfa)</p> <p>Charged negotiated fixed fee for services and space</p>
World Health Organization (WHO)	International Agency for Research on Cancer (IARC)	<p>Financial Statements and non-staff accounting by IARC staff</p> <p>Staff issued WHO contracts and participate in UNJSPF and WHO Staff Health Insurance Fund</p> <p>No charge for support costs</p>
Universal Postal Union (UPU)	Translation Services (STOP) (STAR) and (STAN)	<p>Accounting and Financial Statement preparation by UPU</p> <p>Authority to select personnel</p> <p>Staff participate in UPU Pension Plan</p> <p>Entitlements may differ from UPU staff as determined by translation service governing body</p> <p>No charge for support costs</p>
World Meteorological Organization (WMO) [Joint venture with UN Environmental Programme (UNEP)]	Intergovernmental Panel on Climate Change (IPCC)	<p>Executive Director and Associate Director appointed by IPCC</p> <p>Other staff appointed by WMO</p> <p>All staff have WMO contracts</p> <p>Staff participate in UNJSPF and WMO Health Insurance</p> <p>Accounting provided by WMO</p> <p>No charge for support costs</p>